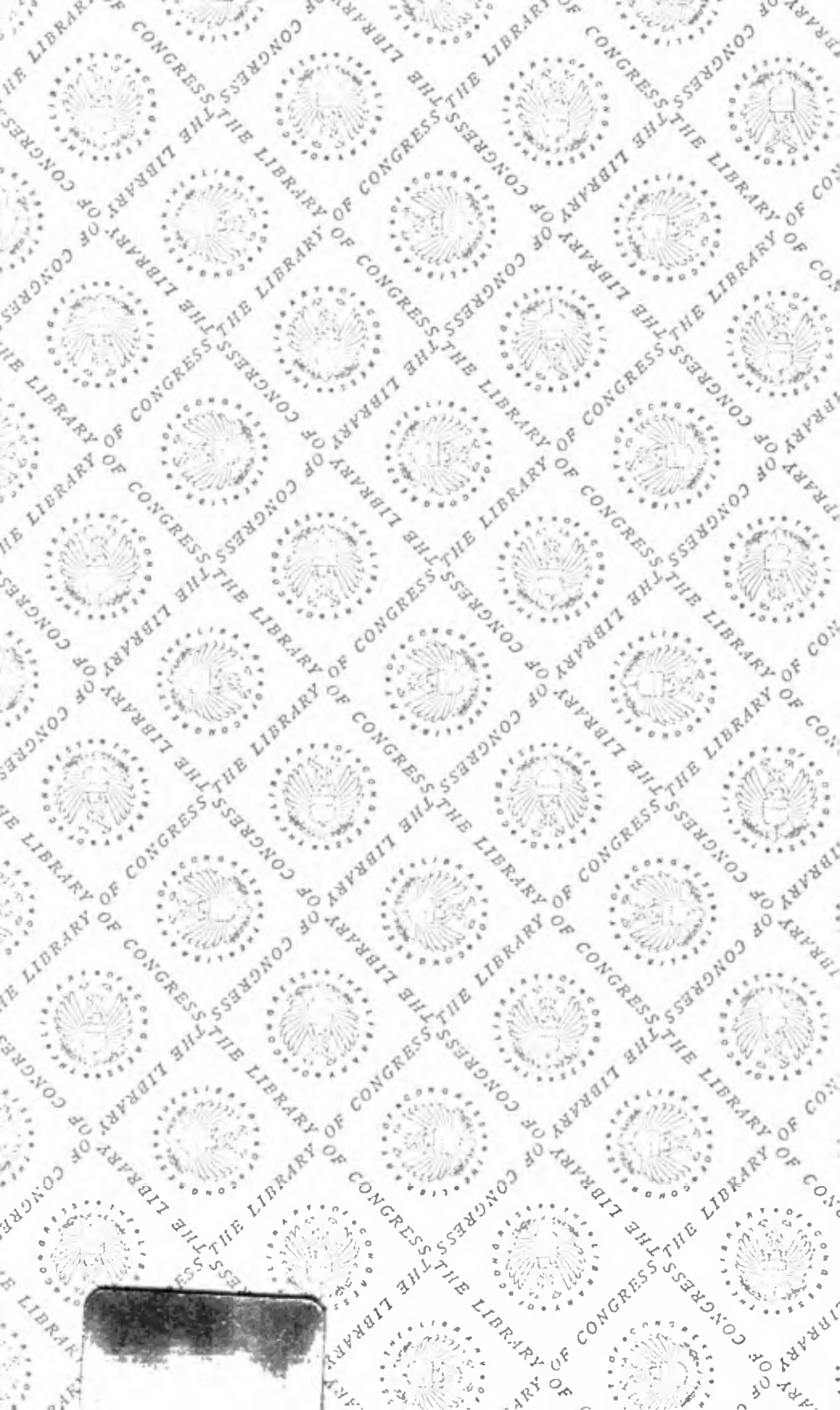

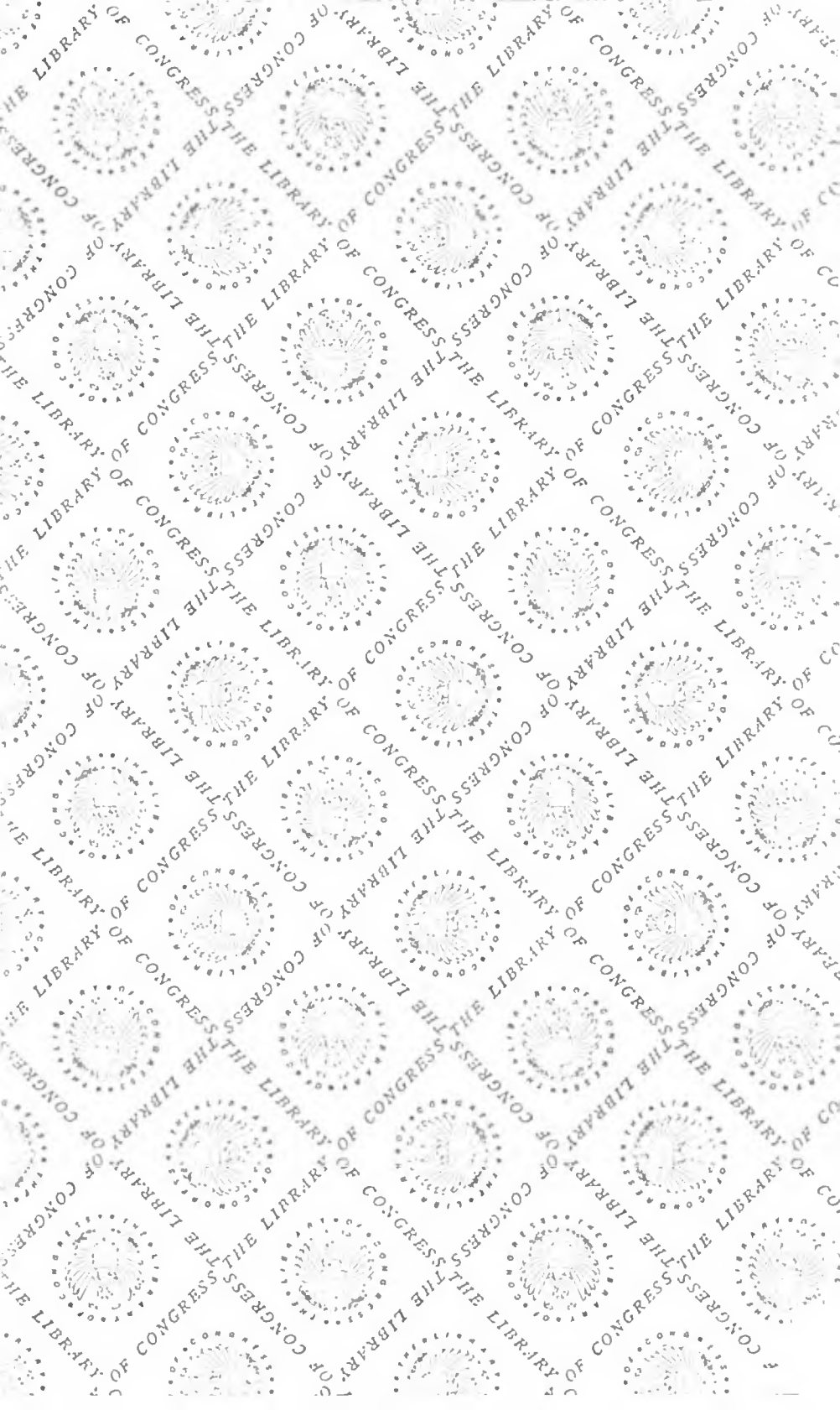

ESTABLISHING ADMINISTRATIVE CONFERENCE

HEARING

BEFORE

SUBCOMMITTEE NO. 3

U.S. Congress. House. OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1664, H.R. 7200, H.R. 7201

A BILL TO PROVIDE FOR CONTINUOUS IMPROVEMENT OF THE ADMINISTRATIVE PROCEDURES OF FEDERAL AGENCIES BY CREATING AN ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, AND FOR OTHER PURPOSES

MARCH 5, 1964

Serial No. 10

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1964
35-725

COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

MICHAEL A. FEIGHAN, Ohio
FRANK CHELF, Kentucky
EDWIN E. WILLIS, Louisiana
PETER W. RODINO, JR., New Jersey
E. L. FORRESTER, Georgia
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
JACK B. BROOKS, Texas
WILLIAM M. TUCK, Virginia
ROBERT T. ASHMORE, South Carolina
JOHN DOWDY, Texas
BASIL L. WHITENER, North Carolina
ROLAND V. LIBONATI, Illinois
HERMAN TOLL, Pennsylvania
ROBERT W. KASTENMEIER, Wisconsin
JACOB H. GILBERT, New York
JAMES C. CORMAN, California
WILLIAM L. ST. ONGE, Connecticut
GEORGE F. SENNER, JR., Arizona
DON EDWARDS, California

WILLIAM M. MCCULLOCH, Ohio
WILLIAM E. MILLER, New York
RICHARD H. POFF, Virginia
WILLIAM C. CRAMER, Florida
ARCH A. MOORE, JR., West Virginia
GEORGE MEADER, Michigan
JOHN V. LINDSAY, New York
WILLIAM T. CAHILL, New Jersey
GARNER E. SHRIVER, Kansas
CLARK MACGREGOR, Minnesota
CHARLES MCC. MATHIAS, JR., Maryland
JAMES E. BROMWELL, Iowa
CARLETON J. KING, New York
PATRICK MINOR MARTIN, California

BESS E. DICK, *Staff Director*
WILLIAM R. FOLEY, *General Counsel*
WALTER M. BESTERMAN, *Legislative Assistant*
WILLIAM P. SHATTUCH, *Legislative Assistant*
CHARLES J. ZINN, *Law Revision Counsel*
MURRAY DRABKIN, *Counsel*
HERBERT FUCHS, *Counsel*
WILLIAM H. COPENHAVER, *Associate Counsel*

SUBCOMMITTEE NO. 3

EDWIN E. WILLIS, Louisiana, *Chairman*

WILLIAM M. TUCK, Virginia
ROLAND V. LIBONATI, Illinois
HERMAN TOLL, Pennsylvania
ROBERT W. KASTENMEIER, Wisconsin
WILLIAM L. ST. ONGE, Connecticut

JOHN V. LINDSAY, New York
WILLIAM T. CAHILL, New Jersey
CHARLES MCC. MATHIAS, JR., Maryland
PATRICK MINOR MARTIN, California

HERBERT FUCHS, *Counsel*

CONTENTS

ESTABLISHING ADMINISTRATIVE CONFERENCE

THURSDAY, MARCH 5, 1964

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 346, Old House Office Building, Washington, D.C., the Honorable Roland V. Libonati presiding.

Present: Messrs. Tuck, Kastenmeier, Lindsay, and Cahill.

Also present: Herbert Fuchs, counsel; Allan Cors, associate counsel.

Mr. LIBONATI. The meeting will come to order.

The hearing on Senate bill 1664 is before Subcommittee No. 3, Judiciary Committee; also H.R. 7200 and H.R. 7201, which are companion bills.

The Honorable Oren Harris, of Arkansas, is the author of H.R. 7200 and H.R. 7201.

(The bills referred to follow:)

[S. 1664, 88th Cong., 1st sess.]

AN ACT To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act."

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation, as those terms are used in the Administraive Procedure Act (5 U.S.C. 1001–1011).

(b) "Administrative agency" means any authority as defined by section 2(a) of the Administrative Procedure Act (5 U.S.C. 1001(a)).

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or a person designated by such board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President, or a person designated by such head of a department or agency;

(4) when authorized by the Council, one or more appointees from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the head of such board or commission with the approval of the hord or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b-2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect information and statistics from administrative agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings and it shall call at least one plenary session each year; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employes, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time as appropriate, experts and consultants who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed $100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable; such reports shall set forth the compliance of the agencies with the recommendations of the Conference.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

(e) Each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. Members of the Conference who are not regular Federal officials or personnel shall be special Government employees for the purposes of sections 203, 205, 207, 208, and 209 of title 18, United States Code.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

Passed the Senate October 30 (legislative day, October 22), 1963.

Attest:

FELTON M. JOHNSON, *Secretary.*

[H.R. 7200, 88th Cong., 1st sess.]

A BILL To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) administration of regulatory and other statutes enacted by Congress in the public interest substantially affects large numbers of private individuals and many areas of business and economic activity;

(b) the protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) the diversity of Federal activities frequently precludes the establishment by statute of administrative procedure which would be generally suitable for use by all agencies;

(d) responsibility for assuring fair and efficient administrative procedure is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(e) experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(f) it is the purpose of this Act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" includes any Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through "rulemaking" or "adjudication" as those terms are defined in section 2 of the Administrative Procedure Act (5 U.S.C. 1001), except that it shall not include—

(1) any function or matter specified in section 4 (1) or (2) of the Act except to the extent that such function or matter consists of proceedings and decisionmaking required to be conducted in conformity with sections 7 and 8 of the Act or the imposition of penalties on private persons through agency action not subject to sections 7 and 8; or

(2) any matter specified in section 5 (1), (3), (5), and (6) of the Act.

(b) "Administrative agency" includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) "Administrative procedure" means procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed preponderantly of Federal officials and personnel, including—

(1) a full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice and consent of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;

(2) the chairman of each independent regulatory board or commission;

(3) the head of each executive department or other administrative agency which is designated by the President;

(4) when authorized by the Council, and appointee from any such board, commission, department, or agency, designated by the department or agency head or, in the case of a board or commission, by the Chairman with the approval of the board or commission;

(5) persons appointed by the President to membership upon the Council hereinafter established who are not otherwise members of the Conference; and

(6) other members in such number as will assure adequate representation of the viewpoints of private citizens and the utilization of diverse experience, who shall be appointed by the Chairman, with the approval of the Council, for terms of two years. Members appointed by the Chairman shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Each member under paragraphs (b) (2) and (b) (3), above, may designate an alternate member to represent him, as occasion requires, in plenary sessions or other activities of the Conference. The alternate member shall have all the obligations and privileges of full membership in the Conference on such occasions.

(d) Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 73b–2) for persons serving without compensation.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 5. To carry out the purposes of this Act the Conference is authorized to—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administartive programs;

(b) make recommendations to administrative agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate;

(c) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure; and

(d) collect from administrative agencies and publish such reports of operating satistics as it deems useful for evaluating and improving administrative procedure.

ORGANIZATION OF THE CONFERENCE

SEC. 6. (a) The membership of the Conference meeting in plenary session shall constitute the Assembly of the Conference. The Assembly shall have

ultimate authority over all activities of the Conference. Specifically, it shall have power to (1) adopt such recommendations as it deems appropriate for improving administrative procedure: *Provided*, That any member or members who disagree with a recommendation adopted by the Assembly shall be accorded the privilege of entering dissenting opinions and alternative proposals in the record of Conference proceedings, and the opinions and proposals so entered shall accompany the Conference recommendation in any publication or distribution thereof; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems necessary for the conduct of studies and the development of recommendations for consideration by the Assembly.

(b) The Conference shall include a Council composed preponderantly of Federal officials and personnel. The Council shall consist of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President, and each member may continue to serve until a successor is appointed. The Council shall have power to (1) determine the time and place of plenary sessions of the Conference and the agenda for such meetings; (2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly; (3) make recommendations to the Conference or its committees upon any subject germane to the purposes of the Conference; (4) receive and consider reports and recommendations of committees of the Conference and transmit them to members of the Conference with the views and recommendations of the Council; (5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman; (6) designate such additional officers of the Conference as it may deem desirable; (7) approve or revise the Chairman's budgetary proposals; and (8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman shall be the chief executive of the Conference. In that capacity he shall have power to (1) make preliminary inquiries into matters he deems important for Conference consideration, including matters proposed by persons inside or outside the Federal Government; (2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to effectuate the recommendations of the Conference; (3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law or agency regulations; (4) recommend to the Council appropriate subjects for action by the Conference; (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference; (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference; (7) appoint employees, subject to the civil service and classification laws, define their duties and responsibilities, and direct and supervise their activities; (8) rent office space in the District of Columbia; (9) provide necessary services for the Assembly, the Council, and the committees of the Conference; (10) organize and direct studies ordered by the Assembly or the Council, utilizing from time to time, as appropriate, experts and consultants, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed $100 per diem; (11) upon request of the head of any agency, furnish assistance and advice on matters of administrative procedure; and (12) exercise such additional authority as may be delegated to him by the Council or the Assembly. The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman shall, on behalf of the Conference, transmit to the President and the Congress an annual report and such interim reports as he deems desirable.

(d) The President may designate a member of the Council as Vice Chairman, who shall serve as Chairman in the event of a vacancy in that office or in the absence or incapacity of the Chairman.

APPROPRIATIONS

SEC. 7. There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

[H.R. 7201, 88th Cong., 1st sess.]

A BILL To provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Administrative Conference Act of 1963".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds and declares that—

(a) Administration of regulatory and other statutes enacted by Congress in the public interest snbstantially affects large numbers of private individuals and many areas of business and economic activity;

(b) The protection of public and private interests requires continuous attention to the administrative procedure of Federal agencies to insure maximum efficiency and fairness in achieving statutory objectives;

(c) Responsibility for assuring fair and efficient administrative procednre is inherent in the general responsibilities of officials appointed to administer Federal statutes;

(d) Experience has demonstrated that cooperative effort among Federal officials, private citizens and others whose interest, competence, and objectivity enable them to make a valuable contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure; and

(e) It is the purpose of this Act to provide suitable arrangements through which Federal officials and other persons as herein provided may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

DEFINITIONS

SEC. 3. As used in this Act—

(a) "Administrative program" means any agency proceeding or action as defined by section 1001(g) of chapter 19 of title 5 of the United States Code.

(b) "Agency" means any Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

(c) "Administrative procedure" means procedure used in carrying ont an administrative program, and shall be broadly construed to include any aspect of agency organization, procedure, and management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but shall not be construed to include the scope of substantive agency responsibility as established by law or matters of substantive policy committed by law to agency discretion.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

SEC. 4. (a) There is hereby established the Administrative Conference of the United States (hereinafter referred to as the "Conference").

(b) The Conference shall be composed of a Chairman, a Council, and an Assembly, constituted in the manner hereinafter provided. The Conference shall maintain an office at the seat of government.

SEC. 5. The Chairman shall be appointed by the President with the advice and consent of the Senate to serve for a term of five years and thereafter until his successor shall be appointed and has qualified. The Chairman shall receive

compensation at the highest rate established by law for an Under Secretary of an executive department of the Federal Government.

SEC. 6. The Council shall consist of the Chairman of the Conference (who shall be the Chairman of the Council) and ten other members appointed by the President. The membership of the Council shall reflect diverse experience in the field of administrative procedure and shall include at least five members of the bar in private practice. Not more than six members of the Council shall he members of the same political party. The members of the Council (other than the Chairman) shall be appointed for terms of three calendar years except that the members initially appointed shall serve for one, two, or three years as designated by the President. Each of their successors shall be appointed for a term of three years from the date of the expiration of the term for which his predecessor was appointed, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of such predecessor. Each member of the Council shall serve until his successor is appointed and qualified. Any vacancy on the Council shall be filled by the President by appointment from among persons eligible for original appointment to the vacant position.

SEC. 7. (a) The Assembly shall consist of the members of the Council and persons from the agencies and members of the practicing bar, scholars in the field of administrative law and government, and others specially informed by knowledge and experience with respect to Federal administrative practice and procedure. The composition of the Assembly and its total number shall be determined from time to time by the Council: *Provided*, That members from outside the Federal Government shall be appointed in such numbers as will assure adequate representation of the public and reflection of diverse experience, but in no event shall more than 50 per centum of the membership be members of the bar in private practice nor shall more than 50 per centum of the membership be persons from the agencies. The Council shall designate the agencies from which members shall be named and the number of such members from each, having due regard for the extent of the administrative programs of the respective agencies. The head of the agency or, if the agency is a board or commission, its chairman with the approval of the board or commission, shall name a member or members from such agency. Other members (except as provided in paragraph (c) hereof) shall be named by the Council. Each member of the Assembly shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization. All members of the Assembly except the members of the Council shall be appointed for terms of two calendar years, except that the terms of initial members of the Assembly shall end December 31, 1964.

(b) A member of the Assembly designated from an agency shall become ineligible to continue as a member of the Assembly under that designation if he leaves the service of that agency. A member not from an agency shall become ineligible to continue as a member of the Assembly in that capacity if he enters the regular service of the Federal Government. If a member resigns, becomes ineligible, or is otherwise unable to continue as a member of the Assembly, the appointing authority that named him shall designate a successor for the remainder of his term.

(c) There shall be appointed from each Congress as members of the Assembly (1) by the President of the Senate, three Members of the Senate and as alternates three members of the staffs of committees of the Senate, and (2) by the Speaker of the House of Representatives, three Members of the House of Representatives and as alternates three members of the staffs of committees of the House of Representatives. The Chief Justice of the United States shall be invited by the Council to appoint from the Judicial Conference of the United States three members of the Assembly and three alternate members.

DUTIES AND POWERS OF THE CONFERENCE

SEC. 8. To carry out the purposes of this Act the Conference shall—

(a) study the efficiency, adequacy, and fairness of the administrative procedure used by Federal agencies to carry out administrative programs in the public interest and to determine the rights, privileges, and obligations of private persons;

(b) make recommendations to the agencies, collectively or individually, and to the President, the Congress, or the Judicial Conference of the United States, as it deems appropriate, including recommendations for preventing

undue delay and expense and unduly long records and for establishing insofar as practicable uniform procedures and rules of practice;

(c) arrange for interchange among the agencies of information which may be useful in improving administrative procedure;

(d) collect information from the agencies and publish such reports as it deems useful for evaluation and improvement of administrative procedure; and

(e) foster cooperative efforts among the agencies and members of the bar to bring about improvements in administrative procedure.

OPERATION OF THE CONFERENCE

SEC. 9. The Chairman shall be the chief executive and administrative officer of the Conference and devote his full time and energies to the duties of his office. He shall—

(a) encourage and stimulate agency action to effectuate the purposes and functions of the Conference and to implement its recommendations;

(b) be the spokesman for and representative of the Conference in relations with the several branches and agencies of the Federal Government and with persons and organizations outside the Federal Government;

(c) make inquiries into matters for Conference consideration, including matters proposed by persons inside or outside the Federal Government and recommend appropriate subjects for action by the Conference;

(d) obtain from the agencies information needed by the Conference or the Chairman in effectuating the purposes and functions of the Conference, which information shall be supplied by the agencies upon his request;

(e) upon request of any agency, furnish assistance and advice on matters of administrative procedure;

(f) prepare for the approval of the Council estimates of the budgetary requirements of the Conference;

(g) appoint employees, subject to the civil service and classification laws, define their duties and repsonsibilities, and direct and supervise their activities;

(h) rent office space at the seat of government;

(i) provide necessary services for the Assembly, the Council, and committees of the Conference;

(j) organize and direct studies for Conference purposes, utilizing from time to time, as appropriate, experts and consultants, who may be employed as authorized by section 15 of the Administrative Expenses Act of 1946, as amended (5 U.S.C. 55a), but at rates for individuals not to exceed $100 per diem; and

(k) exercise such additional authority as may be delegated to him by the Council or the Assembly.

SEC. 10. The Council shall:

(a) determine the time and agenda of sesisons of the Assembly;

(b) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(c) appoint members of committees authorized by the bylaws and regulations of the Assembly;

(d) make recommendations to the Assembly or its committees on any subject germane to the purpose of the Conference;

(e) receive and consider reports and recommendations of committees of the Assembly and transmit them to the Assembly with the views and recommendations of the Council;

(f) designate a member of the Council as Vice Chairman to act in the absence or incapacity of the Chairman;

(g) designate such additional officers of the Conference as it may deem desirable;

(h) approve or revise the Chairman's budgetary proposals; and

(i) exercise such other powers as may be delegated to it by the Assembly.

SEC. 11. (a) The Assembly shall have ultimate authority over the activities of the Conference, but this shall not be construed to limit the independent powers granted the Chairman under this Act. It shall: (1) adopt such recommendations as it deem appropriate for improving administrative procedure; and (2) adopt bylaws and regulations not inconsistent with this Act for carrying out the functions of the Conference, including the creation of such committees as it deems

necessary for the conduct of studies and the development of recommendations for consideration by the Conference. The Conference shall not entertain requests to study bills pending in Congress but this shall not be deemed to limit the subject matter of any study or report of the Conference.

(b) The members of the Assembly shall meet in plenary session at the seat of Government at least once each year and at such other times as may be determined by the Council. At meetings of the Assembly, the Chairman shall preside but shall have no vote unless the Assembly shall be equally divided. At each plenary session the Chairman shall make a full report concerning the affairs of the Conference since the last preceding plenary session.

(c) The Chairman shall transmit an annual report of the Conference to the President and the Congress and may submit supplemental and interim reports to the President, the Congress, the Judicial Conference, or any agency.

(d) Any member of the Conference may express to the Congress, the President, or others his views concerning matters within the cognizance of the Conference.

GENERAL

SEC. 12. Membership in or service to the Conference by persons outside the Federal Government, whether compensated or not, shall not be considered as service or employment bringing such individuals within the provisions of sections 203, 205, 207, 208, or 209 of chapter 11 of title 18 of the United States Code.

SEC. 13. (a) All members of the Conference other than the Chairman shall serve without compensation but shall be reimbursed for actual expenses incurred in connection with the functions of the Conference;

(b) The Chairman may make such expenditures (including expenditures for rent and personal services, office employees, travel, law books, periodicals, books of reference, printing and binding, and studies or investigations) as may be necessary for the execution of his functions and the functions of the Council and the Conference, out of appropriations made from time to time by Congress. Expenditures of the Chairman, the Council, and the Conference shall be allowed and paid only on presentation of itemized vouchers therefor approved by the Chairman or such other person or persons as may be designated for that purpose by the Chairman with the approval of the Council;

(c) There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this Act.

Mr. LIBONATI. The distinguished Congressman from Arkansas, we are very proud to have you before the committee to give your version of the analysis of your bill and the purposes for which it is intended.

We welcome you before the committee.

STATEMENT OF HON. OREN HARRIS, MEMBER OF CONGRESS FROM ARKANSAS

Mr. HARRIS. Mr. Chairman, members of the committee, first—and off the record.

(Discussion off the record.)

Mr. HARRIS. I appreciate the very able membership of this great committee and the capability of the members of this committee.

Mr. LIBONATI. I think you will find we Members of Congress recognize your importance, contributing to the activities of this bill.

You need not apologize for that importance; you have earned it.

Mr. HARRIS. Thank you very much. Let me say I consider it a great honor and high privilege to appear before this distinguished committee.

I am especially pleased to be here today in the interest of a cause which I have felt very deeply about for a long time.

I want to compliment this committee for scheduling hearings on this legislation. I think this legislation is long overdue.

Now, having said that, let me give you a little background of my interest in this field.

(At this point, the Honorable Edwin E. Willis, chairman of the subcommittee, assumed the chair.)

Mr. TUCK. You may take your seat if you prefer.

Mr. HARRIS. Thank you.

In the first place, six of the major regulatory agencies of the U.S. Government come under the jurisdiction of my Committee on Interstate and Foreign Commerce. Even though they are the largest independent regulatory agencies, there are many other agencies of the Government that have similar responsibilities and that are equally interested in this legislation.

I do not have to tell you that our Government is getting so big and these regulatory agencies so powerful, and their responsibilities so great that they constitute a great challenge to democratic institutions.

I say to you in all frankness, if you want to tackle a real problem, you just tackle a problem before one of these great regulatory agencies. Now, for that reason, the procedures which these agencies must follow are terribly important.

There are so many people who represent so many groups and organizations before these agencies that it becomes a big operation.

The American Bar Association has recognized this problem for a long time. People within the agencies themselves have recognized this for a long time. The Federal Bar Association has recognized it for a long time. And because of this general interest, President Eisenhower set up the Administrative Conference.

Judge Prettyman, who is in my judgment one of the outstanding men in the history of this country and certainly in our generation, accepted the tremendous responsibility as Chairman of this Conference.

Well, the Conference was a little slow in getting off the ground. There were so many things to be done. The late Speaker Rayburn mentioned to me on the floor of the House in 1957 that many things had been brought to his attention that needed looking into with regard to these great and powerful agencies of the Government, and he requested that my committee look into some of their operations.

Well, that is all history and you know something about it. The question of proper procedures and ex parte representations became one of the great and important subjects of inquiry.

The procedures before these Commissions is a highly complicated technical problem but we had to try to do something about these procedures.

Delays were so common within some of these agencies and their administrative procedures were so tangled that we needed some forum where the experts could get together and have some way of ironing these things out. They would come together in an effort to agree on some concrete reforms.

So here is a little background that I have not talked about before, but since the statute of limitations has about run out, I will give you the benefit of some background information. When we began our investigation the chairmen of several of these agencies got together, and they decided to see whether there was a little better approach to this thing so that they might be relieved of some of the sting that was

coming. I do not say this in any boastful way at all. That investigation was one of the hardest jobs I ever tackled in my life. We suffered many pains and aches, and the pressures were great. But the agencies were feeling the sting as well as the members of our committee and the people who were practicing before the agencies.

Anyway, the chairmen of these agencies decided that there might be a way to help relieve the situation some and out of this effort came the pitched ball, Administrative Conference to deal with agency procedures.

I was designated as congressional member of it. It was a temporary Conference. Judge Prettyman was the Chairman.

The conference met from time to time trying to carry out the mandate which it was given in the Executive order of 1953.

In the meantime, we had a bill, H.R. 14, which dealt directly with one phase of the agency procedures, and that was the problem of ex parte contacts. We tried to develop that.

I could go on and elaborate extensively, but I think it would be unnecessarily taking your time. Anyway, the temporary Administrative Conference under the direction of Judge Prettyman recommended legislation providing for a permanent conference similar to the Judicial Conference.

Well, I was quite impressed with this proposal. Our investigative subcommittee, after years of study developed specific proposals to deal with the ex parte problem and we asked the temporary conference for its recommendations in this regard. They did a fine job in that respect, and I thank them for it.

I do not think that a permanent Administrative Conference, to be successful, should be set up by Executive order. Such a setup cannot be nearly as effective as an Administrative Procedures Conference that would be set up by law. And the bills which I introduced propose to do just that. The Conference would be the forum where people from all phases of administrative procedures from Government and from professions, can come together, and attempt to iron these things out. In my judgment we have reached the time now when our Government has become so big that it is important to have the right kind of forum set up in order that they can make appropriate recommendations to you and me and the Congress to enact.

So that is what this is on. I introduced all together four bills. I introduced the bill recommended by the Administrative Conference. I introduced the bill recommended by the American Bar Association. These bills do not differ too greatly.

There is some difference with reference to the organization of the Conference. The ABA proposal, I would say in my judgment, is a little more loose in that respect than the other proposal.

The Senate, in dealing with this subject, as I understand was trying to resolve some of the differences between the two bills.

That was the approach they tried.

I introduced two other bills similar to these two before you, but they are applicable only to the agencies that come under the jurisdiction of our own committee.

I told your distinguished chairman, Mr. Celler, a year ago—I have forgotten how long it has been since I introduced this; it was I think last year, June of last year—I told him how important it was and that

I preferred your committee to set up such a Conference that would be applicable throughout the Government and not be limited just to the six major regulatory agencies over which my committee has jurisdiction.

And I had a very favorable response from him, I might say. He assured me that he would cooperate and, when you could get to it, that he would try to see that favorable action would be taken.

So that gives you just an off-the-cuff explanation of my activities and interest in this legislation.

I am going to ask you to let me include in the record a brief statement in which I discuss the bills in a little bit more detail. I know there are others here from the bar and from the agencies involved. They are going to testify, and I trust they will concur in what I have said.

There will be some more detailed explanation and maybe a slight difference of opinion here and there.

I might say one thing. I would like to see the bill, H.R. 7200, seriously considered by this committee. It contains the recommendations of the Administrative Conference.

There are slight differences between the bills in the makeup of the conference. I am not too concerned about the differences though. Frankly either approach would be perfectly all right with me, but I do think it should be an effective organization, and in order to be effective I do think there should be somebody with enough authority to run it who can do a job and is not just a bookkeeper. That is the way I see it.

So I want to say again I commend this committee for taking up this legislation. I believe it would be one of the most far-reaching and desirable things that could happen in the field of administrative procedure. The operation of these most complicated, highly important, and large agencies affect the lives and welfare of the American people.

Mr. WILLIS. Your statement will be incorporated at this point if that is your wish.

Mr. HARRIS. If I may.

(The statement referred to follows:)

STATEMENT OF REPRESENTATIVE OREN HARRIS (DEMOCRAT, OF ARKANSAS)

Mr. Chairman and members of the committee, I am appearing this morning before your great committee at the invitation of the chairman to testify in support of H.R. 7200 and H.R. 7201 which I introduced, and S. 1664, a similar bill, which was passed toward the end of the first session of this Congress by the other body. I am very much gratified that your committee is holding hearings on this important legislation.

The purpose of the three bills is to establish a permanent Administrative Conference of the United States.

On June 24, 1963, I introduce H.R. 7200 which incorporates essentially the recommendations submitted by the temporary Administrative Conference which was created on April 13, 1961, by Executive Order No. 10934.

H.R. 7201 incorporates the recommendations of the American Bar Association on the same subject. H.R. 7201 differs from H.R. 7200 primarily with regard to the membership of the Conference and the responsibilities of the Director of that Conference.

On the same day I introduced two similar bills also providing for the establishment of a permanent Administrative Conference, but limited to the six independent regulatory agencies which come within the legislative jurisdiction of the Committee on Interstate and Foreign Commerce; namely, the Civil Aeronautics

Board, the Federal Communications Commission, Federal Power Commission, Federal Trade Commission, Interstate Commerce Commission, and the Securities and Exchange Commission.

At the time of the introduction of these bills I expressed the hope that the great Committee on the Judiciary would give favorable consideration to H.R. 7200 and H.R. 7201. However, I stated further that I considered the establishment of a permanent Administrative Conference so important that I would prefer seeing such Conference established on a limited basis rather than having no permanent Conference at all. Therefore, I introduced H.R. 7202 and H.R. 7203, having in mind that such a Conference should deal at least with the problems common to the independent regulatory agencies which come within the jurisdiction of our Committee on Interstate and Foreign Commerce.

Mr. Chairman and members of the committee, I feel that the temporary Administrative Conference did a very worthwhile job indeed in dealing with the problems with which it was able to deal within the short period of its existence. However, the problems facing the administrative agencies, particularly the independent regulatory agencies, are very real and many proposals have been made for improving the organization and procedures of these agencies. It is my conviction that the proposals for improvement of the administrative process can best be handled if Federal officials responsible in these areas have an opportunity to cooperate with each other and with private citizens whose knowledge of the field enables them to make unique contributions to complex administrative and regulatory problems.

I am glad to see that the legislation is specific to preclude consideration by the Conference of "matters of substantive policy committed by law to agency discretion" (S. 1664, sec. 3, p. 4, lines 1 and 2). Matters of substantive policy should be considered by the individual agencies and by the appropriate congressional committees which have legislative jurisdiction with regard to such agencies.

In earlier years, some Members of Congress expressed apprehension that an Administrative Conference might assume the role of a czar and exercise oversight functions which ought to be reserved to the Congress.

I am glad to see that the bill is specific in this respect too and makes clear that the function of the Conference is purely advisory.

Mr. Chairman and members of the committee, the differences between the bill passed by the other body, S. 1664, and the two bills which I introduced, are slight indeed. I introduced two bills, H.R. 7200 and H.R. 7201, because I feel very strongly that large numbers of private individuals in many areas of business and economic activities can greatly benefit from the studies and proposals of the Administrative Conference. The protection of public and private interests requires continuing attention to the administrative procedure of Federal agencies in order to assure maximum efficiency and fairness. The enactment of the legislation before your committee is long overdue and I trust you will give careful consideration to all of the bills before you. I want to stress, however, that I am much more concerned with the prompt enactment of one of these bills rather than having enactment delayed by disagreement over details. Under these circumstances, the committee may well desire to act on the bill already passed by the other body and thus expedite the enactment of this important legislation.

Again, I want to commend the chairman and members of this committee for holding hearings on these important proposals and I want to express my thanks for permitting me to appear before you this morning.

Mr. WILLIS. May I ask you a couple of questions?

Mr. HARRIS. Yes, indeed.

Mr. WILLIS. Reading from your bill, page 2, H.R. 7200, it says:

It is the purpose of this act to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest.

Now, what do these recommendations lead to?

Let us be a little more specific. Does that mean they have authority to come out with new approaches? What does this do, for instance, to the Administrative Procedure Act? Or will you go into it a little bit?

Mr. HARRIS. Yes; I shall be glad to.

Let me say all three bills provide the same thing. There is no controversy or no difference at all.

No, it does not; it does not affect the Administrative Procedure Act differently from other laws. What it does is that it provides a forum for all of these different viewpoints to be brought together in order to come up with recommendations.

Now, those recommendations may come to you, this committee, to amend the Administrative Procedure Act. They may come to my committee to amend certain of the laws or acts affecting the agencies under our jurisdiction.

It may go to these agencies as a recommendation for rulemaking procedures, and so forth and so on. But they are only recommendations.

I think the best way I can express it is that it would be something like the Judicial Conference in studying new and improved methods by which administrative responsibilities of these agencies can be carried out.

Mr. WILLIS. And you think it would be too soon and premature to undertake an act to define the duties in more specific terms?

Mr. HARRIS. I think we would be talking——

Mr. WILLIS. In other words, it talks in terms of meetings together, exchange of information, and developing recommendations for action by proper authorities. Do you think that is specific enough?

You would not want to guess what they might come out with and therefore you would not want to spell it out any more than that?

Mr. HARRIS. I think if we were to try to bind the Conference, we would place some restrictions on the freedom that it otherwise would exercise. In that case I do not believe it could be as effective as we would hope it would be. It should make not only recommendations but should suggest guidelines for the responsible people in the agencies which then would adopt specific procedures, rules, regulations, and laws themselves.

Mr. WILLIS. But you do envisage that as a result of these studies, meetings, and cooperative efforts and exchange of information will come recommendations?

Mr. HARRIS. Yes.

Mr. WILLIS. For improvement; and those recommendations may be made to certain agencies within their present rulemaking structure, to improve procedures or perhaps recommend amendments to the Administrative Procedures Act, or perhaps to one or more committees of Congress if it is to be a broad approach, in which case it would probably come to this committee.

Mr. HARRIS. I think it would be a tremendous help to us and, therefore, a benefit to the public.

You know, Mr. Chairman, under our procedure, the way we operate now, we get too often proposals that are advocated by special interests. Some group that we may have the greatest admiration and respect for and that has the highest integrity comes forward with particular suggestions and recommendations for procedural changes.

Now, a lot of misunderstanding develops over the suggestions that come from these special interest groups. The Conference would afford an opportunity to weed out a lot of those proposals and furnish some objective information and recommendations.

I think it would bring about a better understanding among the agencies themselves on procedures. It could be of tremendous value in providing guidelines, and the staff members and members of these agencies would get a lot of benefit out of it. And you know, yourself, one of the problems that we have here is the contention, which has been made time after time after time, that the staffs of these agencies are running the show down there.

A lot of these things I think could be brought to the forefront with such a conference of this kind.

Mr. WILLIS. Well, take an agency over which your committee has jurisdiction, any one in your mind; could you give us who are not informed in detail on the ramifications of their hearing procedures, or licensing procedures, or whatever power they exercise over the public, where these recommendations could come into play, and what are some of the probable pitfalls that could be involved?

Mr. HARRIS. All right, let us take for example one of the most difficult questions, the widely discussed question of conflict of interest, code of ethics, and ex parte contacts.

Now, we got deeply involved in that, as you know, in our hearings in 1959. We had recommendations. We had proposed legislation on it. We held hearings on those. We reported them. But there is one thing we did find out. The problems in these agencies differ in this respect. However, there are certain problems that are of mutual concern and interest.

Now, in my judgment these agencies could be brought together in this Conference here and all of them would meet and they would have a forum in which they could iron out these things. They might be able to work out uniform procedures by this method that would be helpful to all.

And they could then determine those things that are not common to them and leave those to the individual agencies.

Now, when it is worked out in this method, the Federal bar, the practitioners before the agencies, the people who are interested in it, they know what it is about and they can contribute to this. In my judgment we would have lot better procedures within the agencies.

I think it would strengthen the Administrative Procedures Act, which I have criticized some as you know, because sometimes it becomes a lawyer's haven, the way it has been. I do not have anything against lawyers—I am one myself, and I am for them—but we run into interminable delays in which years and years will pass before they could ever conclude a matter of great importance. The length of these proceedings in some of the agencies give rise to ex parte presentations.

A tremendous amount of good could come out of something like this, in my judgment.

Mr. WILLIS. And the Conference, I assume, would have authority to go into whether judicial review is ample at present?

Mr. HARRIS. That could be one of the items on the agenda for the Conference to discuss. We have, I might say as the gentleman well knows, from time to time, bill after bill after bill providing judicial review, since you mentioned that; and some laws are set up one way and some in another way. A man who is trying to follow the whole thing finds he is completely lost. Our friend Joe O'Hara, who gave

a lot of his time and study in this particular field—he was here for 18 years, and on my own committee, and a good lawyer—made that one of his specialties. Every time we had a new bill, regardless of what was in it, that question of judicial review would be discussed over and over again.

Mr. WILLIS. Governor Tuck?

Mr. TUCK. I have no questions.

Mr. LIBONATI. Yes.

Congressman, as a matter of fact, you had an example the other day of a very sensitive situation with the FCC on the question of delegation of power on the part of the Congress as assumed by the FCC, which necessitated positive action on the part of your committee to pass a bill negating that power they claimed they had under the act, the original act of 1934, as I recall.

This type of conference would eliminate any such questions between the agency and the legislative body as we do with the Judicial Conference in introducing bills here which are submitted to the Judicial Conference for consideration and study. Is not that one of the purposes of this legislation?

Mr. HARRIS. I would not want to contend that it would eliminate that situation, because it has something to do with substantive rather than procedural questions.

Mr. LIBONATI. I do not mean to eliminate.

Mr. HARRIS. But as an example, this would provide a forum for an entire industry to raise procedural questions. These could be placed on the agenda of the Conference, and all of these people on all sides could discuss these questions and see whether or not there should be some recommendations with reference to changes in these procedures.

Mr. LIBONATI. That is what I mean.

Mr. HARRIS. Yes.

Mr. LIBONATI. This would be a functioning unit for creating a line of demarcation even between the agencies and the powers on the part of the legislative government, not to interfere with them in their procedures which they have under their rules if we vest them with those signal powers; whereas under the present circumstances, it becomes incumbent upon the chairman—as you are the chairman of your subcommittee—to bring about legislation to negate and prevent the use of a power (which you presented in your arguments) never delegated, nor was any contemplation by the Congress of delegating such powers to an agency in the Government to set up rates, and so forth, for limiting advertising, and limiting the cost of advertising, going into that level of operation.

Am I correct in that?

Mr. HARRIS. Yes, sir; what I tried to explain, this would set up what I think is a most worthy organization in which these matters could be thrashed out in a way that would bring about a better understanding of the problems and more effective operation of these agencies.

Mr. LIBONATI. I thank you.

Mr. KASTENMEIER. Mr. Chairman.

I appreciate the area that the gentleman from Arkansas has brought us into. This is undoubtedly going to be one of the most important bills our committee has ever gone into.

For the purpose of legislative identification here at the outset of these hearings, you refer to four bills, two of which are before this committee apparently, two of which were considered before your own committee, but, because they dealt with specific agencies, were not referred to this committee. Is that correct?

Mr. HARRIS. The ones that were referred to my committee are applicable only to the six major regulatory agencies that come under the jurisdiction of my committee.

At the same time, I recognize the better part of wisdom if this proposition could be made applicable across the board, and, therefore, the other bills come under the jurisdiction of this committee.

Mr. KASTENMEIER. We have three bills before us; one Senate bill, H.R. 7200, and H.R. 7201.

H.R. 7200, as best you know, embodies the recommendations of the Administrative Procedure Conference?

Mr HARRIS. That is true.

Mr. KASTENMEIER. I note you also stated that these bills have the support of your committee.

Mr. HARRIS. Well, our committee would be favorable to either of these three bills. But when you start getting down to the finer points, we do think that H.R. 7200 would provide a little more effective organization.

Mr. KASTENMEIER. And the H.R. 7201?

Mr. HARRIS. Gives the chairman a little bit more authority, and stiffens with regard to the composition of the Conference. Those are the differences.

Mr. KASTENMEIER. H.R. 7201 is the American Bar Association's proposal?

Mr. HARRIS. That is true. But there are a lot of similarities between the proposals.

Mr. KASTENMEIER. As far as you know, this will not disturb, nor is it designed to disturb, the existing balance or imbalance between the regulatory agencies, administrative agencies, and special interests they seek to regulate?

Once adopted this would not disturb this existing relation?

Mr. HARRIS. This takes no power or jurisdiction away from any administrative agency or regulatory agency.

Mr. KASTENMEIER. Can we assume, then, that both the interests that the regulatory agencies regulate and the agencies themselves—both, let us say, support one of the two bills?

Mr. HARRIS. Well, now, you are getting a little bit beyond me. I do not know what the position of the agencies is, as close as I have been to these major ones. But I think they generally are favorable to some such conference.

I do believe you will have this Conference as time goes on. I have not discussed it with any of them; they may contradict me, I do not know—I believe the agencies might be quite concerned that the Conference would not be composed of as many Government people as they would like to see. There has been some indication that the American Bar Association is fearful that it might get loaded down with the Government people. But I do not believe that is so. I believe what the judge, Judge Prettyman, had in mind, and what President Eisenhower had in mind, and what President Kennedy had

in mind when I talked to him about it, when he extended the Conference, was that it should be an overall balanced organization set up to fill a vacuum, which, in my judgment, is needed now since the Government has gotten so big, and the agency procedures so important and complex.

Mr. KASTENMEIER. Thank you, Congressman.

Mr. HARRIS. I am for 7200, if you want an answer to that question you and Mr. Libonati were talking about.

Mr. LIBONATI. Half a million dollars, that is more than the Judicial Council costs. We would rather——

Mr. HARRIS. There has been some speculation on what it would cost. Some people say $250,000, others say less than half a million. I think that would depend upon the extent of the organization, how often it would meet, what kind of a staff it would have, and just how vigorous it would be in its activity.

Mr. LIBONATI. I thought this was going to be a conference; not a convention, say to Miami. I thought they would meet here where all of the agencies are quartered, and use the agencies' moneys, if any, for travel, expenses.

Mr. HARRIS. Well, we talked about this before. If I recall correctly, it was decided that this organization should not depend on how any one of the agencies of the Government felt toward it, and how forcefully any agency went out for funds to be appropriated through that agency to contribute to this organization.

I think there is something to it, because I do not think we ought to base it on the fact that the ICC is going to have so much money in which it gives to it—the FTC, the Maritime Commission, or whatever it might be. I think what the Congress and what Judge Prettyman had in mind, and the recommendation came from that organization, that we recognize the importance of it and not have any particular agency or group have a stranglehold on any phase of it.

Mr. LIBONATI. Thank you, Mr. Chairman.

Mr. LINDSAY. Mr. Chairman, I have a few technical questions. The size of the Assembly is contemplated as being what?

Mr. HARRIS. I beg your pardon?

Mr. LINDSAY. How big is the Assembly?

Mr. HARRIS. What is it, 68, 70? What is it?

Mr. LIBONATI. Ten.

Mr. LINDSAY. No, that is the Council.

Mr. LIBONATI. The other is a flexible number.

Mr. LINDSAY. What does the bill provide for in respect of the size of the Assembly?

Mr. HARRIS. The Assembly itself, I think, would be composed of around 80 to 90 members, if I remember.

Mr. LINDSAY. Is that provided in the legislation, Mr. Chairman?

Mr. HARRIS. Let me check. It has been so long since I have gone over these.

Mr. LINDSAY. We can pass that for the moment if you wish and we will get to it perhaps later on when one of the other witnesses goes into it.

Mr. HARRIS. As I recall, the legislation does not nail down the specific number of the membership. But in the recommendations of the temporary conference which was established by Executive order of

the President, it seems to me the number was around 80 or 90 people, something like that.

Mr. LINDSAY. Well, the reason I asked the question is because, on page 7 of H.R. 7200 and page 10 of H.R. 7201, it is provided that the Assembly shall have ultimate authority over the Conference, so the Assembly is the boss.

Mr. HARRIS. Yes.

Mr. LINDSAY. So it is quite important to know how big it is and who selects the members of the Assembly.

Who would select the members of the Assembly? The members of the Assembly would be picked by the Congress?

Mr. HARRIS. No, no. The members of the Assembly would be selected—so many from Government, so many from the practitioners——

Mr. LINDSAY. Who would make that decision? Why would choose and where is it provided in the bill?

Mr. HARRIS. Page 4, section 4, H.R. 7200, states:

> The Conference shall be composed preponderantly of Federal officials and personnel, including:
>
> A full-time Chairman, who shall be appointed for a five-year term by the President, by and with the advice of the Senate. The Chairman shall receive compensation at the highest rate established by law for the chairman of an independent regulatory board or commission, and may continue to serve until his successor has been appointed and has qualified;
>
> The chairman of each independent regulatory board or commission;
>
> The head of each executive department or other administrative agency—

and so on and so on, on down through that page.

And there is a provision in H.R. 7201 whereby certain Members of the Congress——

Mr. LINDSAY. Yes.

Mr. HARRIS. I must say it has been some time since I have analyzed this.

Mr. LINDSAY. Let me ask you about the definition of agencies that are covered by the bill. I take it from the definition that I read on page 3 of H.R. 7200 that all executive departments are included?

Mr. HARRIS. Are included.

Mr. LINDSAY. Are included.

Mr. HARRIS. Yes. [Reading:]

> "Administrative agency" includes all executive departments and any other Federal agency, including a constituent agency of an executive department, which carries out an administrative program.

Mr. LINDSAY. The jurisdiction to make recommendations by this Conference would include, for example, the procedures used in the issuance of passports by the State Department, the procedures of the Immigration and Naturalization Service of the Justice Department, and all other procedural subjects or questions that come before agencies of that kind? Would this include all of the reviewing procedures in the Pentagon? For example, the awarding of contracts?

Mr. HARRIS. Conceivably, yes.

Mr. LINDSAY. It would include all quasi-judicial matters?

Mr. HARRIS. Oh, yes, indeed.

Mr. LINDSAY. Of administrative agencies. How about court-martials and other quasi-judicial matters in the Pentagon; Board of Military Appeals, for example, would that be covered?

Mr. HARRIS. I would assume that would be a part of the executive department.

Mr. LINDSAY. It is within the Pentagon.

Mr. HARRIS. Yes.

Mr. LINDSAY. That is part of the Defense Department.

Mr. HARRIS. Yes. So it could not be ruled out.

Mr. LINDSAY. How about jurisdictional questions which involve jurisdictional questions between executive agencies; for example, a dispute between the Antitrust Division of the Justice Department and the FAA as to whether or not mergers are properly the concern of one or the other or both, which is something which has long haunted the bar? Now, this being a conference which is supposed to promote efficiency in Government procedures, would that kind of thing be covered?

Mr. HARRIS. It was intended for the Conference to be involved in substantive matters.

Mr. LINDSAY. So it would not cover the area of what executive department has jurisdiction over what subject?

Mr. HARRIS. That was not the intention and I think this will be developed during the course of the hearings.

Mr. LINDSAY. Thank you very much, Mr. Chairman, I do appreciate your testimony very much.

Thank you, Mr. Chairman, for your very enlightened presentation.

Mr. HARRIS. Thank you.

Mr. WILLIS. As usual, you are very convincing.

(Subsequently, Chairman Harris submitted the following letter:)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C., April 10, 1964.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee No. 3, House Judiciary Committee,
Washington, D.C.

DEAR COLLEAGUE: You will recall that you were kind enough to offer me an opportunity to testify on March 5, 1964, before your subcommittee on several bills providing for the establishment of a permanent administrative Conference. In the course of the hearings and subsequent thereto, I was advised that the subcommittee was concerned in securing further details with regard to (1) the size of the proposed Conference, (2) the size of its full-time staff, and (3) the estimated cost of the proposed activity for the purpose of enabling the subcommittee to consider suitable amendments incorporating limitations not now contained in these bills.

In an attempt to be helpful to the subcommittee, I contacted Judge Prettyman and requested him to review past experience regarding these items. Insofar as this past experience constitutes a guide it would seem that the following limitations might be considered:

(1) Size of proposed Conference: not to exceed 91 persons, consisting of 30 members plus a Chairman of the Conference, and 10 Council members.

(2) Size of full-time staff: a professional staff not to exceed five (an executive director and four attorneys) plus four secretaries, and one clerk.

(3) Estimated cost of proposed activity: not to exceed $260,000.

This information was taken from a memorandum prepared by Judge Prettyman and I understand that you have been furnished a copy of this memorandum by Judge Prettyman. Of course, you do appreciate that these proposed limitations are best estimates based on past experience, and I am not suggesting in any way that your subcommittee may not desire on the basis of other considerations to insert different limitations in the legislation which you have now under consideration.

Sincerely yours,

OREN HARRIS, *Chairman.*

Mr. WILLIS. The next witness on our agenda is Judge Prettyman.

Judge, we are very happy to have you. I know you have devoted a lot of time and study to this subject and we are going to try to squeeze your legal lemon, try to get from you a practical explanation of this proposal.

STATEMENT OF HON. E. BARRETT PRETTYMAN, SENIOR CIRCUIT JUDGE, COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND FORMER CHAIRMAN OF PRESIDENT KENNEDY'S TEMPORARY ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Judge PRETTYMAN. I am very happy to be here, Mr. Chairman, and members of the committee.

My name, for the record, is E. Barrett Prettyman. I am a senior judge on the U.S. Court of Appeals for the District of Columbia Circuit, and I am here because I was Chairman of the Administrative Conference of the United States, first called by President Eisenhower in 1952 or 1953, and the similar Administrative Conference called by President Kennedy on April 13, 1961, by Executive Order 10934.

I appear in support of S. 1664, on behalf of the Council of the Administrative Conference and myself, and urge that the bill be reported favorably and its passage by the House recommended.

This project has now come full circle. It began in September 1949, almost 15 years ago, when a subcommittee of the Judiciary Committee of the House—possibly this same subcommittee or its predecessor—communicated with the Chief Justice of the United States and asked him to request what was then the senior council of circuit judges, now the Judicial Conference of the United States, to endeavor to develop some timesaving procedures in certain cases, including controversies before the regulatory agencies.

The Judicial Conference appointed an advisory committee, and the latter, after almost a year's study, expressed the view that the agencies themselves must solve the problem; that a cooperative approach with mutual exchange of experience and suggestion was imperative. It recommended that the Judicial Conference suggest to the President that he call a conference of representatives of the administrative agencies for the purpose of devising means for achieving these objectives.

The Conference approved the suggestion. Chief Justice Vinson submitted it to the President; on April 29, 1953, President Eisenhower called such a Conference. It met throughout the years 1953 and 1954. It adopted 35 specific recommendations and, as its final action, recommended that a similar conference be established on a permanent basis.

Thereafter the subject was considered in great detail by many organizations, including the American Bar Association, the Federal Bar Association, the Judicial Conference for the District of Columbia Circuit, and the chairmen of the large independent agencies.

The idea was approved all along the line. Under date of August 29, 1960, President Eisenhower authorized arrangements for the initial organization of such a Conference. The national election in November of 1960 interrupted the work of the organizing committee and promptly after his inauguration, President Kennedy, on April 13,

1961, sent the Congress a special message on regulatory agencies, and by Executive order on the same day established a temporary Administrative Conference.

That Conference was composed of the Chairman and 85 members, representing Government agencies having rulemaking and adjudicatory functions, and persons outside the Government, both lawyers and students of government, with experience in administrative law.

President Kennedy directed that Conference to submit specific recommendations and also to advise him of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies.

That Conference recommended that a similar Conference be established on a continuing basis as a means by which the agencies of the Federal Government could cooperatively, continuously, and critically examine their administrative processes.

That recommendation resulted in the preparation of the bill which was introducted in the Senate, passed the Senate and is now before this committee, S. 1664. The bill was unanimously adopted by the Senate and is now before this committee.

Thus at long last, the answer to the request of this subcommittee made 15 years ago is before the committee. It comes with the endorsement of the Senate, two conferences composed of the top experts in this field in the country, the Judicial Conference of the United States, the regulatory agencies, American bar, and the Federal bar.

I have prepared a detailed history of this project, brought up to date as of today, and I would like to submit copies for the use of this committee.

I have a number of copies here.

Mr. WILLIS. They will certainly be accepted.

(The document referred to is as follows:)

THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

(As of March 5, 1964)

In July of 1949 there was testimony before a special subcommittee of the Judiciary Committee of the House of Representatives relating to delays in the trial of certain cases. In the course of these hearings the chairman announced: "* * * we have communicated with Chief Justice Vinson and we have asked him to request the Senior Council of Circuit Judges, when they meet in September, to endeavor to develop some timesaving procedures, procedures especially in the antitrust laws." Therefore, at its September meeting, 1949, the Judicial Conference of the United States adopted a resolution which read, in part:

"The Conference was of the opinion that experience has indicated the desirability of examining the present procedure governing controversies arising under the antitrust laws and the various statutes establishing regulatory agencies with a view to advancing their effective, expeditious, and economic disposition, and authorized the designation of a committee of the Conference to consider: [means by which these ends might be achieved.]"

The Chief Justice appointed a Committee of 10 judges, Circuit Judges Stone, Magruder, Augustus Hand, Lindley, and Prettyman, and District Judges Chesnut, Kloeb, Leahy, Rifkind, and Yankwich.

At its first meeting the Committee took action which is reflected in the following extract from a letter from the Committee to the Chief Justice:

"The Committee was troubled by the assignment to it of the administrative agency phase of the general problem. The members of the Committee were of the view that their own limited experience in this field would place a limited value upon their recommendations in the field.

"After careful discussion the Committee unanimously instructed me to suggest respectfully to you the appointment of a second section to this Committee, to be composed of persons familiar with the problems of the administrative agency procedure; for example, members or general counsel of commissions or experienced private practitioners before the agencies, or both."

Thereupon the Chief Justice authorized the appointment of "an Advisory Committee, composed of persons in and out of the Government familiar with the problems of administrative agency procedure." On June 20, 1950, such an Advisory Committee was appointed. It had 12 members: 3 members of administrative agencies, 3 general counsels for agencies, 2 private practitioners who had then recently left membership on administrative agencies, and 3 lawyers in the general practice with prior administrative law experience. In a footnote are the names of the members of that committee.[1]

This Advisory Committee spent 9 months in a firsthand investigation of the causes of excessive delay and expense and unduly voluminous records in the procedures of Federal regulatory agencies, and possible remedies therefor. On March 30, 1951, it submitted its report, which contained a dozen recommendations. The first was for an "Administrative Agency Conference." The idea was first suggested by Clyde Aitchison, of the ICC, a member of the Committee, and at that time the dean of all commissioners in the Government. At any rate he made a speech during that time to the ICC Practitioners Association, which was later published in its Journal of November 1950 (vol. XVIII, pp. 118, 120–122). In that talk the Commissioner stressed the responsibility of the Commission and of its practicing bar in the formulation of remedies for the problems of cumbersome, costly, and overly detailed procedures. Here the germ of an idea can be readily detected. The Advisory Committee said:

"The regulatory agencies themselves must solve this problem. The solution may best be accomplished by the cooperation of all agencies involved; in fact, a cooperative approach, with mutual exchange of experience and suggestions, seems imperative for the most efficient functioning of the administrative agencies. With such an approach to this problem in mind, your Committee's primary recommendation is that the Judicial Conference suggest to the President that he call or cause to be called, a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, for the purpose of devising ways and means for achieving the objectives with which this Committee is concerned."

The Judicial Conference Committee to which this report was addressed approved it, and the Judicial Conference itself approved it. At its meeting in September 1951, the Conference adopted a resolution as follows:

"Upon consideration, the Conference ordered that the Committee's suggestions and recommendations with respect to the call of a conference of representatives of the administrative agencies having adjudicatory and substantial rulemaking functions, be approved with this additional recommendation:

"That representatives from the Federal judiciary and the bar as may be desired be designated to attend said Conference and to serve in such capacity as the President may determine."

Chief Justice Vinson duly transmitted this suggestion to the President.

On April 29, 1953, President Eisenhower issued a document addressed to all executive departments and administrative agencies. He said, in part: "Accordingly, I am happy to call a conference of representatives of the departments and agencies, and of the judiciary and the bar, for the purpose of studying the problems thus described."

He requested the Attorney General to cause a list to be prepared of the departments and administrative agencies having adjudicatory and rulemaking functions. He requested each department and agency thus listed by the Attorney General to designate a representative to meet with other such representatives in a conference. With the agreement of the Chief Justice he invited three Federal judges to participate. He named 3 trial examiners and 12 practicing lawyers to participate.

The Attorney General listed 57 agencies. Thus the Conference was composed of 75 members. This Conference came to be known as the President's Conference on Administrative Procedure. It operated in the following fashion: A Committee on Organization and Procedure, consisting of six members, was appointed

[1] E. Barrett Prettyman, Chairman; Clyde B. Aitchison, John Carson, Benedict P. Cottone, Robert K. McConnaughey, E. L. Reynolds, Paul L. Styles, Preston C. King, Jr., Joseph J. O'Connell, Jr., Bradford Ross, John L. Sullivan, Roger J. Whiteford.

and acted as an executive committee, planning the organization and the rules of procedure. Nine other standing committees were appointed—on prehearing, pleadings, evidence, trial problems, hearing officers, judicial review, uniform rules, office of Federal administrative procedure, and style.[2]

These committees conducted studies of the subjects assigned to them by the Conference. Some of them conducted extensive hearings. They summoned to their assistance prominent experts in the field, who were denominated consultants. The Committees prepared reports, some of which were extensive and contained much basic material. These reports were circulated to the members of the Conference but were not debated or acted upon by the Conference. The Committees also submitted recommendations, which were direct and succinct and based upon or drawn from reports. These recommendations were placed on the agenda of the Conference and were debated and adopted or rejected. When adopted, they were referred to the Committee on Style for editorial revision. This procedure was, generally speaking, the procedure usually followed by legislative bodies.

The Conference held four plenary sessions, June 10, 11, 1953, November 23, 24, 1953, October 14, 15, 1954, and November 8, 9, 1954. It adopted 35 recommendations, 2 addressed to the President, 3 to the Judicial Conference, 7 to the Civil Service Commission, 1 to the General Services Administration, and 22 to the various Government agencies. It adopted a final report, which was duly transmitted to the President. As its final action the Conference adopted a resolution recommending that a similar conference be established on a permanent basis. President Eisenhower acknowledged receipt of the report on March 3, 1955, and said, in part:

"The work of the Conference has shown that an exchange of experience and views between Federal administrators and between them and members of the practicing bar and the judiciary produces useful results. I am confident that means will be devised for continuing such cooperative effort."

The resolution respecting a permanent conference was referred by the President to the Attorney General.

Thereafter several parallel series of events ensued. The Judicial Conference of the District of Columbia Circuit, the American Bar Association, the Federal Bar Association, and the chairman of the large independent agencies all studied and took action in respect to the proposal for a permanent conference of the agencies respecting their procedures and other problems.

In the fall of 1958, in preparing for the Judicial Conference of the District of Columbia Circuit to be held in the spring of 1959, the Committee on Arrangements listed as one topic for the consideration of the conference "Problems of Administrative Law."

This Circuit Judical Conference consists of all the Federal judges on the district court and the circuit court of appeals, various Federal and municipal law officials, and about 120 members of the practicing bar who are selected by a committee of judges and lawyers. Several months before a meeting of the Conference its Committee on Arrangements selects topics for debate, consideration, and action. Study groups, usually composed of 20 or 25 members each, are assigned to study and present recommendations on these topics. The membership of the 1959 conference included a number of Government attorneys and a large number of attorneys engaged in practice before the administrative agencies.

The study group on the administrative law topic was chairmanned by William C. Koplovitz, Esq. It presented three reports. All reports recommended the establishment of a permanent Conference on Administrative Procedure but they differed on machinery.

One report recommended that the Attorney General call together a group to formulate plans for the Conference and to make appropriate recommendations to the President for its establishment. Another report recommended that the President call an interim conference pending enactment of a statute, and that the permanent Conference be established by legislation. The third report recommended that the chairmen of the seven large independent agencies meet and establish the Conference.

After extensive debate the Judicial Conference adopted the second of these proposed recommendations; that is, an interim conference to be established by the President and a permanent conference to be established by an act of

[2] The Chairman of these Committees were John C. Doerfer, Allison Rupert, Emory T. Nunneley, Jr., Edmund L. Jones, Earl W. Kintner, Lambert McAllister, Thomas J. Herbert, John A. Danaher, and Conrad E. Snow.

Congress. That recommendation was transmitted to the Judicial Conference of the United States, which at its September 1959 meeting appointed a committee to consider the matter. At its meeting in March 1960, this conference; i.e., the Judicial Conference of the United States, adopted the following resolution:

"*Resolved*, That this Conference approves the establishment of a permanent Conference on the procedures of executive departments and administrative agencies in adjudications and rulemakings, in which Conference representatives of the departments, the agencies, and the practicing bar would participate, for the purpose of exchanging information and making recommendations to the several agencies and departments for the improvement of the administration of justice by them. The Chief Justice, as Chairman of this Conference, is authorized to communicate this action, at such times as he deems appropriate, to the President and to such other officers, including Members of the Congress, as may be concerned with this subject from time to time; and the Chief Justice is further authorized to implement this action further in such other ways as he may deem appropriate."

Chief Justice Warren thereafter transmitted the resolution to President Eisenhower, together with his own strong personal recommendation for such a conference.

In the meantime, coincident with the study undertaken by the Judicial Conference (District of Columbia) a special committee of the Federal Bar Association began a study of the matter and made a report to the National Council of that association. On May 20, 1959, the day before the meeting of the District of Columbia Judicial Conference, the National Council of the Federal Bar unanimously adopted a resolution which endorsed the concept of a permanent conference, and called upon the Attorney General to invite a committee of representatives of the agencies and the practicing bar to formulate plans to be presented to the President for such a conference. The Federal bar, it can be safely said, was opposed to legislation as an initial step.

On September 24, 1959, Chief Justice Warren addressed the annual convention of the Federal Bar Association in a speech which was one of the key events in the development of administrative law in recent years. Among other things he said:

"Today it is generally recognized that far too many administrative proceedings in Federal agences are also subject to excessive and unnecessary delay. Perhaps even more discouraging in the agency proceedings is the fact that meaningful information on the state of the backlog, and the extent of the delay, is not even available.

"This is true because there presently exist few criteria or standards for determining how long it should normally take to get final agency action on the ordinary administrative case.

* * * * * * *

"If there is anything which symbolizes the disillusion of the American people—of the lay public—in our legal system, it is the factor of unconscionable delay.

* * * * * * *

"Turning briefly to the legal services performed in the administrative agencies, I know that many of you are aware that last year 21 Federal administrative agencies terminated in excess of 25,000 proceedings, and that the trend is continually upward. * * *

"For this reason, I am particularly glad to inform you that the Judicial Conference of the United States, at its meeting last week, approved in principle the proposal for a permanent Conference on Administrative Procedure—which the Federal Bar Association and judges have been advocating.

"Such a conference—composed basically of agency representatives, but with practicing lawyers and other participants as well, is sorely needed to conduct continuing and practical studies of ways to eliminate undue delay, expense, and volume of hearing record; to develop uniform rules of practice and procedure; and generally to promote greater efficiency and economy in the administrative process."

Also in the meantime, at the meeting of the Council of the Administrative Law Section of the American Bar Association at Miami in August 1959, a resolution was adopted endorsing the idea of a permanent Conference on Administrative Procedure, the steps to be an interim conference to be set up by the President and a permanent conference to be created by the Congress. This, we may note, was the same as the view taken by the Judicial Conference (Dis-

triet of Columbia). That resolution was adopted by the section, transmitted by special order to the house of delegates, and there adopted. Transmission to the Judicial Conference (U.S.) and to the President was authorized. At the same time the house of delegates designated the council of the administrative law section and the special committee on procedure, chairmanned by Smith W. Brookhart, Esq., to act jointly in the preparation of legislation on the subject. Proposed legislation was prepared for presentation to the midwinter meeting of the house of delegates in Chicago in February 1961. On account of then pending events, action on that report was postponed until the August meeting, 1961.

In February 1960 the Subcommittee on Legislative Oversight, of which Congressman Oren Harris was the chairman and Robert W. Lishman was chief counsel, submitted an interim report (H. Rept. No. 1258, 86th Cong., 2d sess.), in which attention was called to the steps being taken in the process of the formulation of a proposed permanent group to study the overall problems of the agencies. The subcommittee said:

"Current thinking is that this new organization, to be known as the Conference on Administrative Procedures, will perform, in the administrative law field, the present functions in the judicial field which are performed by the Conference on Judicial Procedures."

Still in the meantime, the Chairmen of six of the large independent agencies (Civil Aeronautics Board, Federal Trade Commission, Federal Power Commission, Federal Communications Commission, Securities and Exchange Commission, and Interstate Commerce Commission) jointly prepared a letter to the President. This was a long, detailed statement, in which the need for a permanent conference was stated and the composition of such a conference suggested. The letter further proposed that an organization committee prepare an agenda for the Conference and suggested further that consideration of legislation not be undertaken until after organization of the Conference and that recommendations respecting legislation be adopted by the Conference itself. In this letter it was proposed that eight of the Cabinet departments, the Civil Service Commission, the Atomic Energy Commission, the Federal Aviation Agency, and the seven large independent agencies send representatives to the Conference, and that certain bar associations nominate members. "Such associations," said the letter, "might well include" the American Bar, the Federal Bar, the ICC Practitioners, the Motor Carrier Lawyers Association, the Federal Power Bar, the Federal Communications Bar, the Federal Trial Examiners' Conference, "and similar organizations." That letter was eventually completed and dated August 25, 1960.

Under date of August 29, 1960, President Eisenhower concurred in the proposal and authorized arrangements for the initial organization of such a conference. A committee, which came to be known as an Organization Committee, was thereupon appointed[3] and after several weeks of work completed a proposed set of bylaws.

The Conference envisioned by that set of bylaws was an assemblylike body of 65 delegates, 40 of whom would be from the Government and 25 from outside the Government. One delegate would be designated by the Secretary of each of nine Cabinet departments, two from each of the seven big agencies, two trial examiners, and six to be appointed at large by the chairman, with the approval of the Executive Committee. The plan envisioned that five delegates be named by the president of the American Bar Association, two by the president of the Federal Bar Association, eight from the practicing bar, five from university faculties, and five experts in nonlegal fields, all to be named by the chairman, with the approval of the Executive Committee. The plan provided for standing committees, for a permanent secretariat, and for liaison with the Congress through the naming of six Representatives, three from each House, by the Vice President and Speaker, respectively.

The proposed bylaws described in some detail the subjects which would be considered by the Conference. About this time the national election occurred, and action looking toward a call of the Conference was postponed.

---

[3] The names of the members of this committee were Donald C. Beelar, Marver H. Bernstein, Kent H. Brown, John L. Fitzgerald, Robert W. Ginnane, Earl W. Kintner, Robert Kramer, John C. Mason, Thomas G. Meeker, Carl R. Miller, E. Blythe Stason, Theodore F. Stevens, Jerrold G. Van Cise, Franklin M. Stone; E. Barrett Prettyman, chairman; and William C. Koplovitz, secretary.

Promptly after the election, President-elect Kennedy named Dean James M. Landis to prepare for him a report on the administrative agencies and their problems. Dean Landis submitted his report on December 26, 1960. In it he referred to the President's request of August 29, to the Organization Committee, and to the preliminary draft of bylaws. He recommended that this work be encouraged and continued. He said, in part:

"* * * Much can come from this effort, including not merely revisions in our administrative procedures but also the making of our regulatory agencies into a system just as the Judicial Conference of the United States has made a system of what were once isolated and individual Federal courts. * * *

* * * * * * *

"The concept of an Administrative Conference of the United States promises more to the improvement of administrative procedures and practices and to the systematization of the Federal regulatory agencies than anything presently on the horizon. It could achieve all that the concept of the Office of Administrative Procedure envisaged by the Hoover Commission and endorsed by the American Bar Association hoped to accomplish, and can do so at a lesser cost and without the danger of treading on the toes of any of the agencies."

On April 13, 1961, President Kennedy sent to the Congress a special message on regulatory agencies. In the course of that message he discussed the establishment of an Administrative Conference of the United States. He said, in part: "The process of modernizing and reforming administrative procedures is not an easy one. It requires both research and understanding. Moreover, it must be a continuing process, critical of its own achievements and striving always for improvement." He announced that he had issued an Executive order calling at the earliest practicable date the Conference, to be organized by a council of lawyers and other experts from the agencies, the bar, and university faculties. He said that the council would consider questions concerning the effective dispatch of agency business, "along with the desirability of making this Conference, if it proves itself, a continuing body for the resolution of these varied and changing procedural problems." He further said:

"The results of such an Administrative Conference will not be immediate but properly pursued they can be enduring. As the Judicial Conference did for the courts, it can bring a sense of unity of our administrative agencies and a desirable degree of uniformity in their procedures. The interchange of ideas and techniques that can ensue from working together on problems that upon analysis may prove to be common ones, the exchanges of experience, and the recognition of advances achieved as well as solutions found impractical, can give new life and new efficiency to the work of our administrative agencies."

In his Executive Order No. 10934 President Kennedy established the Administrative Conference of the United States, to consist of a Council of 11 members named by him and a general membership from the executive departments, the administrative agencies, the practicing bar, and other persons specially informed. "The purpose of the Conference," says the Executive order, "shall be to assist the President, the Congress, and the administrative agencies and executive departments in improving existing administrative procedures." The order provided that the composition of the membership should be determined by the Council; that the total membership be not less than 50 persons, a majority of whom should be from the executive departments and administrative agencies; that the government members be designated by the heads of their respective departments and agencies; and that the other general members be named by the Chairman, with the approval of the Council. The order provided that the Director of the Office of the Administrative Procedure, which is in the Department of Justice, should act as the executive secretary of the Conference. It authorized the making of arrangements with the President of the Senate and the Speaker of the House for participation by interested committees of the Congress.

The next day after the foregoing events the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee returned a report (S. Rep. No. 168, 87th Cong., 1st sess.) in the course of which it said, in part:

"VI. The subcommittee recommends that every assistance should be given in making permanent an Administrative Procedure Conference, and that Congress should provide the Office of Administration and Reorganization with funds to provide a permanent secretariat for that conference.

* * * * * * *

"That such an assembly of the persons most directly concerned with the functioning of administrative agencies offers a continuing possibility of improvement in procedures through interchange of ideas is a matter of universal agreement * * *. The subcommittee recommends that every congressional encouragement be given to the establishment and continuation of the conference. Since, as we have pointed out elsewhere, we believe that the guidance of the President is necessary for the improvement of the administrative process, we recommend that the permanent staff should be a part of the Office of Administration and Reorganization, and therefore a part of the President's own staff."

On April 29, 1961, the President announced the appointment of the Council of the Administrative Conference. In so doing he called attention to the fact that the Council membership, apart from the Chairman, was equally divided between those from the Government and those from outside the Government. The members, besides the Chairman, were Manuel F. Cohen, member of the Securities and Exchange Commission; Walter Gellhorn, professor of law, Columbia University, New York City; Joseph P. Healy, vice president-general counsel, Boston Edison Co., Boston, Mass.; Everett Hutchinson, chairman, Interstate Commerce Commission; James M. Landis, special assistant to the President; John D. Lane, of the firm of Hedrick & Lane, Washington, D.C.; Earl Latham, Eastman professor of political science, Amherst College, Amherst, Mass.; Carl McGowan, of the law firm of Ross, McGowan, & O'Keefe, Chicago, Ill.; Nathaniel L. Nathanson, professor of law, Northwestern University, Evanston, Ill.; and Max D. Paglin, General Counsel, Federal Communications Commission. Webster Maxson, Director of the Office of Administrative Procedure, was executive secretary.

The Council thus constituted included, besides the Chairman, three practicing lawyers, three professors (one of whom is an outstanding authority in political science and two are outstanding professors of administrative law), and three are from Government agencies. The 10th member of the Council, Dean James M. Landis was highly experienced in the chairmanship of regulatory agencies, highly experienced in the teaching of law, and highly experienced in the practice of the law.

The Council was immediately called into session and met in three sessions, Monday and Tuesday, May 8 and 9, Monday and Tuesday, May 22 and 23, and on Monday, June 26, 1961. On May 23 it finalized plans for the institution and operation of the Conference. It named the agencies to be invited, approved a list of non-Government members to be named, adopted bylaws to be proposed to the Conference, adopted in general terms a program of work for the Conference, and adopted a budget to be submitted to the Congress. It called the first meeting of the Conference for Tuesday, June 27, in Washington. That first plenary session was held as scheduled.

The Conference thus set up was composed of a Chairman and 85 members. Of these, 10 were the Council named by the President; 44 members were named by the heads of executive departments and agencies, 22 were named from outside the Government, and 2 trial examiners were designated. The members not named by the departments and agencies were named by the Chairman of the Conference with the approval of the Council. The composition of the Conference was 60 percent from the Government agencies and 40 percent from the outside (5+44+2=51; 5+29=34). Members named by the heads of Government agencies were as follows: By the Secretaries of the Cabinet departments each 1 member, and by some whose departments include several agencies, 2 members; by the heads of each of the so-called big 7 independent agencies, 2 members; by the heads of 14 other agencies having rulemaking or adjudicatory functions, 1 member each. Of the members from outside the Government service, 21 were practicing lawyers, 3 were from law school faculties, 2 were from faculties of schools of government, and 1 was an accountant.

In the selection of the members from the practicing bar, a major effort was made to produce a cross section of all shades of interest in administrative law procedure. A list was made of the names of over a hundred thoroughly qualified people from which to choose. Specialists in each of the major areas of Federal regulation were named. Some others with broad general experience in several areas were included. Some lawyers not specialists were named. Geography, both of the lawyers and of their major clients, was a factor, although of course several from Washington, D.C., were necessarily on the list. Not more than one member of any one law firm, or from any one university, was named. Different interests in the several areas of interest are represented, as, for ex-

ample, shippers as well as the railroads and motor carriers in the field of interstate commerce. A mixture of political affiliations was sought. Every invitee accepted. The roster of the Conference is attached.

No member of the Conference, either from the Government or from outside, appeared in a representative capacity. Each appeared as an individual, and while of course each gained assistance by inquiry and consultation, the views expressed and the votes cast by each were understood to be his own.

The Conference operated on an assembly or legislative basis. Subjects for study and recommendation were immediately assigned to committees. Nine standing committees were established. Their principal areas of interest were respectively: (1) personnel, (2) rulemaking proceedings, (3) licensing and certificating proceedings, (4) compliance and enforcement proceedings, (5) the adjudication of claims, (6) statistics and reports, (7) internal operation and procedure, (8) education and information, meaning the preparation of manuals on procedure and the holding of seminars in the field, and (9) judicial action of various sorts. Specific topics were assigned for study and recommendation, ranging from recruitment programs for lawyers in government, through improvements in proceedings for all sorts of cases, formulation of criteria for measuring delay and backlogs, better internal operations, grassroot informational meeting, manuals in craftmanship, the massive complex which is delay and expense, all the way to better means for judicial review.

The chairman of these committees are Ashley Sellers, Esq.; Commissioner Gilliland, of the CAB; Commissioner Hyde, of the Federal Communications Commission; Messers. Robert W. Ginnane, James McI. Henderson, and Cyrus R. Vance, who were, respectively, General Counsel of the Interstate Commerce Commission, the Federal Trade Commission, and the Department of Defense; Messers. Charles W. Bucy and David Ferber, who were associate counsel of the Department of Agriculture and the SEC; and Prof. Emmette S. Redford, of the University of Texas.

Liaison with the Congress by means of Members of each House, designated by the Vice President and the Speaker, respectively, which designees are invited to attend the sessions of the Conference and to enjoy the privilege of the floor. These designees are Senator Hart, Muskie, and Dirksen, and Congressmen Oren Harris, Walter Rogers, and John B. Bennett.

The committees were fortunate in obtaining the services of educators in leading law schools in the country, who acted as full-time staff directors and as consultants as the need appeared. The names of these scholars were: Auerbach of Wisconsin and Minnesota, Cramton of Michigan, Jones of Columbia, Kramer of George Washington, Lester of Cincinnati, McKay of New York University, and Metzger of Georgetown. And the committees were authorized to secure the services of research directors, upon a retainer basis of employment, but members of the Council and of the Conference and most of the consultants served without compensation. Administrative and secretarial services were supplied the Conference and the committees by the Office of Administrative Procedure of the Department of Justice.

The Conference, as a whole, operated in the form of a legislative assembly. The course of operation was: (1) A subject was suggested for study. Such suggestion might come from anywhere or anybody. (2) The Council adopted the suggestion and proposed its assignment to a committee. (3) The assembly approved the Council assignment. (4) The committee considered the subject and directed research into it. (5) A staff director made or directed the research and formulated the data thus accumulated into a staff report. (6) The committee considered the staff report and prepared a recommendation of action on the subject. It formulated a report—usually, of course, based upon the staff report—in support of its recommendation. These—the committee report and its recommendation—were two separate documents, one somewhat extensive and the other succinct. (7) The Council considered the recommendation and passed it along to the Assembly. Both the report and the recommendation were circulated to the entire membership. (8) The Assembly debated the recommendation in a public plenary session and voted on it. (9) If adopted by the Assembly, the recommendation was transmitted to the President. A total of 30 recommendations were adopted, covering a wide variety of matters, more importantly the following:

"Jurisdiction and procedures for review orders of the Interstate Commerce Commission; production of records and briefs by means more economical than printing, and designation of record after the filing of briefs; unification of the

Armed Services Board of Contract Appeals and elimination of subsidiary boards; reexamination by agencies of their procedural rules, and creation of machinery within the agencies for continuous observation of procedures; delegation of final decisional authority; subpena practices; licensing of truck operations by the Interstate Commerce Commission; right to counsel of persons compelled to appear; improper ex parte representations; statistics on administrative proceedings (1962); judicial enforcement of orders of the National Labor Relations Board; ratemaking procedures; Civil Aeronautics Board procedures for the consideration of domestic route applications; Federal Communications Commission procedures for the consideration of mutually exclusive applications for broadcast facilities in the same community; Federal Communications Commission procedures for broadcast licensing; right to counsel of persons who appear voluntarily; continuing statistical study; advanced training of agency professional personnel; examiners; legal career service; debarment of contractors; discovery in administrative proceedings."

The Conference met in six plenary sessions. The first was held on June 27, 1961. The five later sessions convened on December 5 and 6, 1961; April 3, 1962; June 29, 1962; October 16, 17, and 18, 1962; and December 4 and 5, 1962. The first session was attended by 76 members, the second by 74 members, the third by 77 members, the fourth by 69 members, the fifth by 81 members, and the final session by 72 members.

The nine standing committees met for the first time immediately following the first plenary session. During the 18 months which followed there were a total of 93 such committee meetings.

Initial arrangements for the operation of the Conference included the establishment of an interagency group fund, pursuant to authority contained in the Executive order and 31 U.S.C. 691. In this way $60,000 was made available for the first few months of Conference operation. In September 1961, Congress added an appropriation of $150,000 for Conference operations during the remainder of the fiscal year 1962, and in October 1962 an additional $100,000 was appropriated for the 6 months of fiscal year 1963 in which the Conference would be in operation.

At the end of fiscal year 1961, $28,018.09 of the funds contributed to the interagency group fund remained unobligated. At the end of fiscal 1962, $57,543 remained unused from the total funds available. These unobligated balances were released to the Treasury of the United States.

The Conference rendered a final report of its activities under date of December 15, 1962. The report was made public.

At the same time, under date of December 17, 1962, the Conference, pursuant to section 2 of Executive Order 10934, reported its suggestions of appropriate means to be employed in the future for the purpose of improving the processes of administrative agencies. It said, in part:

"We recommend the establishment of means by which agencies in the Federal Government may cooperatively, continuously, and critically examine their administrative processes and related organizational problems. Believing that the main sources of information as well as the resolve to couple fairness with efficiency lie within the agencies themselves, we urge that the proposed organization be composed largely of governmental personnel, but with a sufficient infusion of outside experts to assure objectivity and variety of views."

It recommended the creation, on a permanent footing, of an Administrative Conference of the United States, to be composed of a Council and an Assembly. The Council, it said, should consist of a Chairman and 10 other members, the Chairman to be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years, and other Councilors to be appointed by the President to serve 3-year terms.

The Assembly, the Conference said, should be composed of the members of the Council and, in addition, not more than 80 members, to be named preponderantly from among Government personnel by the heads of agencies designated by the Council, and, in lesser numbers, chosen by the Council from the bar, the universities, and other sources. The Administrative Conference, the recommendation said, should have power to inaugurate and conduct studies of any phase of any agency's procedures, giving "procedures" the broadest meaning, and should have power to submit recommendations to the President, the Cabinet departments, the administrative agencies, the Congress and its committees, and the Judicial Conference of the United States.

The report related the recommendation in considerable detail, and recited at length the reasons which impelled the recommendation. The report was made public.

Thereafter the Bureau of the Budget translated the recommendation of the Conference for a continuing Conference into the form of a proposed bill. The draft was introduced in the Senate as S. 1664, 88th Congress, 1st session, by Senator Long of Missouri, chairman of the Senate Subcommittee on Administrative Practice and Procedure. The bill was referred to the Committee on the Judiciary. That committee reported the bill with amendments and recommended that it pass (Rept. No. 621, Oct. 29, 1963, 88th Cong., 1st sess.). The report was unanimous. The bill passed the Senate without objection on October 30, 1963 (109 Congressional Record 19566). In the House of Representatives, on October 31, 1963, the bill was referred to the Committee on the Judiciary. There it was referred to Subcommittee No. 3.

Appendix

Identification of Council Members

Judge E. Barrett Prettyman (Chairman), senior judge of the U.S. Court of Appeals for the District of Columbia Circuit.

Max D. Paglin (Vice Chairman), General Counsel, Federal Communications Commission, formerly Assistant General Counsel and staff member.

Manuel F. Cohen, member of the Securities and Exchange Commission, formerly Director, Division of Corporation Finance, Securities and Exchange Commission.

Walter Gellhorn, professor of law, Columbia University, 1933 to date; Director, Attorney General's Committee on Administrative Procedure, 1939–41; Office of the Solicitor General, U.S. Department of Justice, 1932–33; author of various books on administrative law.

Joseph P. Healey, vice president-general counsel of Boston-Edison Co.; former commissioner of Corporations and Taxation for the Commonwealth of Massachusetts; former law partner in law firm of Hemenway & Barnes, Boston, Mass.; professor of corporate law at Boston College Law School since 1947.

Everett Hutchinson, member and former Chairman of the Interstate Commerce Commission.

James M. Landis, partner in the firm of Landis, Brenner, Feldman & Reilly; formerly Special Assistant to the President; Chairman of the Civil Aeronautics Board; Chairman of the Securities and Exchange Commission; dean of the Harvard Law School.

John D. Lane, member of the firm of Hedrick & Lane, Washington, D.C.; formerly administrative assistant to Senator Brien McMahon of Connecticut.

Earl Latham, Eastman professor of political science, Amherst College, Amherst, Mass.

Carl McGowan, member of the firm Ross, McGowan & O'Keefe, Chicago, Ill.; general counsel, Chicago & Northwestern Railroad; formerly professor of law, Northwestern University Law School; formerly counsel to the Governor of Illinois.

Nathaniel L. Nathanson, professor of law, Northwestern University; consultant to the Justice Department with respect to administrative procedures, 1961; Office of Price Administration, Associate General Counsel, 1942–45; Securities and Exchange Commission, 1935–36; law clerk to Justice Louis D. Brandeis, 1934–35; author of casebook on administrative law.

General Membership of the Administrative Conference of the United States

Robert E. Adams[1] of the Department of Commerce.

Karl E. Bakke of the U.S. Tariff Commission.

Donald C. Beelar of the firm Kirkland, Ellis, Hodson, Chaffetz & Masters, Washington, D.C.

James H. Benney of the firm Orrick, Dahlquist, Harrington & Sutcliffe, San Francisco, Calif.

Marver H. Bernstein of Princeton University.

---

[1] Succeeded Paul A. Johnston of the Department of Commerce.

Carman G. Blough of Harrisonburg, Va.
J. D. Bond of the Atomic Energy Commission.
Reva Beck Bosone of the Post Office Department.
Cyril F. Brickfield [3] of the Veterans' Administration.
Kent H. Brown of the State of New York Public Service Commission.
Charles W. Bucy of the Department of Agriculture.
Clark Byse of the Law School of Harvard University.
John T. Chadwell of the firm Snyder, Chadwell, Keck, Kayser & Ruggles, Chicago, Ill.
G. Howland Chase of the Board of Governors of the Federal Reserve System.
Cyrus J. Colter of the Illinois Commerce Commission.
John F. Cushman of the Federal Communications Commission.
Richard M. Davis of the firm Lewis, Grant & Davis, Denver, Colo.
George S. Dixon of the firm Matheson, Dixon & Bieneman, Detroit, Mich.
Charles Donahue of the Department of Labor.
Thomas J. Donegan of the Subversive Activities Control Board.
Bernard Dunau of the firm Jaffee & Dunau, Washington, D.C.
David C. Eberhart of the General Services Administration.
Irvin Fane of the firm Spencer, Fane, Britt & Browne, Kansas City, Mo.
Joseph A. Fanelli of the firm Fanelli & Spingarn, Washington, D.C.
Roland J. Faricy [4] of the firm Faricy, Moore, Costella & Hart, St. Paul, Minn.
William Feldesman of the National Labor Relations Board.
David Ferber of the Securities and Exchange Commission.
Edward W. Fisher of the Department of the Interior.
Thomas J. Flavin [4] of the Department of Agriculture.
Abe Fortas of the firm Arnold, Fortas & Porter, Washington, D.C.
Ralph Fuchs of the University of Indiana Law School.
Myles F. Gibbons of the Railroad Retirement Board.
Robert E. Giles of the Department of Commerce.
Whitney Gilliland of the Civil Aeronautics Board.
Robert W. Ginnane of the Interstate Commerce Commission.
Nathaniel H. Goodrich [5] of the Federal Aviation Agency.
Frank C. Hale [6] of the Federal Trade Commission.
Lawrence E. Hartwig of the Renegotiation Board.
James McI. Henderson of the Federal Trade Commission.
Harold W. Horowitz of the Department of Health, Education, and Welfare.
Thomas T. F. Huang [7] of the Department of State.
Leo A. Huard of the University of Santa Clara College of Law.
Rosel H. Hyde of the Federal Communications Commission.
John A. Johnson of the National Aeronautics and Space Administration.
T. C. Kammholz of the firm Vedder, Price, Kaufman & Kammholz, Chicago, Ill.
R. Keith Kane of the firm Cadwalader, Wickersham & Taft, New York, N.Y.
Sidney G. Kingsley [8] of the Atomic Energy Commission.
Earl Kintner of the firm Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C.
John W. Kopecky of the Housing and Home Finance Agency.
William C. Koplovitz of the firm Dempsey & Koplovitz, Washington, D.C.
Sol Lindenbaum of the Department of Justice.
Karl D. Loos of the firm Pope, Ballard & Loos, Washington, D.C.
Dominick L. Manoli of the National Labor Relations Board.
John C. Mason of the Federal Power Commission.
Joseph E. McElvain of the Department of Health, Education, and Welfare.
Thomas G. Meeker of the firm Schnader, Harrison, Segal & Lewis, Philadelphia, Pa.
Lawrence V. Meloy of the Civil Service Commission.
James L. Pimper of the Federal Maritime Commission.
John B. Prizer of the Pennsylvania Railroad Co., Philadelphia, Pa.
Edwin F. Rains [9] of the Department of the Treasury.
Sidney Rawitz of the Department of Justice.
Emmette S. Redford of the University of Texas.
Hubert A. Schneider of Pan American World Airways, New York, N.Y.

---

[3] Succeeded William J. Driver of the Veterans' Administration.
[4] Deceased.
[5] Succeeded Daggett H. Howard of the Federal Aviation Agency.
[6] Succeeded Philip R. Layton of the Federal Trade Commission.
[7] Succeeded William L. Griffin of the Department of State.
[8] Succeeded John S. Graham of the Atomic Energy Commission.
[9] Succeeded Robert H. Knight of the Department of the Treasury.

David Searls of the firm Vinson, Elkins, Weems & Searls, Houston, Tex.
Harold Seidman of the Bureau of the Budget.
Ashley Sellers of the firm Cummings & Sellers, Washington, D.C.
Edward F. Sloane of the Federal Home Loan Bank Board.
Fred B. Smith [10] of the Department of the Treasury.
Bertram E. Stillwell of the Interstate Commerce Commission.
Fredric T. Suss of the Small Business Administration.
Joseph C. Swidler [11] of the Federal Power Commission.
Earl J. Thomas of the Department of the Interior.
Cyrus R. Vance, Secretary of the Army.
John H. Wanner of the Civil Aeronautics Board.
Howard C. Westwood of the firm Covington & Burling, Washington, D.C.
Edmund H. Worthy of the Securities and Exchange Commission.
Joseph Zwerdling of the Federal Power Commission.

CONGRESSIONAL REPRESENTATIVES

Everett McKinley Dirksen, Senator from Illinois.
Philip A. Hart, Senator from Michigan.
Edmund S. Muskie, Senator from Maine.
John B. Bennett, Representative from Michigan.
Oren Harris, Representative from Arkansas.
Walter Rogers, Representative from Texas.

ALTERNATE CONGRESSIONAL REPRESENTATIVES

Thomas B. Collins of the Senate Committee on the Judiciary.
Franklin B. Dryden of the Senate Committee on Appropriations.
Cornelius Kennedy of the Senate Subcommittee on Administrative Practice and Procedure.
Kurt Borchardt of the House Committee on Interstate and Foreign Commerce.
Charles P. Howze of the House Special Subcommitee on Regulatory Agencies.
Andrew Stevenson of the House Committee on Interstate and Foreign Commerce.

CONSULTANTS

Robert M. Benjamin of the firm Parker, Duryee, Benjamin, Zmino & Malone, New York, N.Y.
Kenneth Culp Davis of the University of Chicago Law School.
J. Forrester Davison of the George Washington University School of Law.
Roger S. Foster of Westinghouse Air Brake Co., Pittsburgh, Pa.
Louis L. Jaffe of the Law School of Harvard University.
John d. Millett, president of Miami University, Oxford, Ohio.
J. Lee Rankin of New York, N.Y.
Robert L. Stern of the firm Mayer, Friedlich, Spiess, Tierney, Brown & Platt, Chicago, Ill.

Judge PRETTYMAN. The object of the bill is to establish a means by which the delays, the expense, the voluminous records, and the technicalities which plague proceedings before administrative agencies can be eliminated or at least reduced.

I need not comment upon the importance of this subject, or upon its complexities and I shall not enter upon a detailed description of the provisions of the bill.

I would like to make three points:

One, delay in the regulatory process is a composite of many tiny details. It is not one single, all-inclusive malfunction. It cannot be carried by any sweeping declaration, no matter how righteous or how fine sounding it may be.

The administrative process consists of many parts, which are supposed to function in smooth correlation. Delay arises when one or

[10] Succeeded John K. Carlock of the Department of the Treasury.
[11] Succeeded Jerome K. Knykendall of the Federal Power Commission.

more of these parts malfunctions. Thus delay may arise from inept pleadings, failures in crystallizations, too many or not the proper parties, lack of advance organization, cumbersome presentation of direct evidence, unnecessary cross-examination, the amount and complexity of bulk material, repeated continuances, the handling of interlocutory rulings, the manner of preparing findings, the competence of the hearing examiners, and a myriad or more of seeming minutia, apart from the main issues of the cases.

Thus, the task of eliminating delay is not in the adoption of sweeping resolutions; it takes careful, tedious study and adjustments of many phases of the process. It takes patience, and expertise. It is not dramatic or exciting.

I like to think of any analogy to an automobile. We say an automobile breaks down, but as a matter of fact, a whole automobile never breaks down. The breakdown occurs in one or more of its dozens of components, some large and some small. The trouble may be any one of many kinds of troubles. Repairs require an expert, first to diagnose and then to correct.

My second point is that administrative proceedings are not all of one type but are of many different kinds. The problems of delay, expense, and volume vary greatly.

The proceedings range from applications which involve scores of parties, sometimes dozens of cities and towns, all the way down to the simple proceeding involving a single party and a simple question. Thus a railroad rate proceeding or an area airline route proceeding is totally different from a claim for veterans' insurance or the discharge of a single Government employee.

A study made during the recent conference revealed that there are 108 agencies which conduct hearings on open records for the purpose of determining rights and privileges of private people.

The study indicated that these agencies conduct 268 different kinds of proceedings, and in the year 1962, they completed 67,500 cases.

My third point is that the need is for a continuous study of agency procedures. A single study with recommendations serves very little practical purpose.

In the first place, general declarations of policy do not fit many small individual problems that arise; in the second place, any single declaration quickly becomes out of date in the rapidly changing atmosphere of the agency processes; in the third place, many suggested remedies ought to be tried out experimentally, and, therefore, the formulation of suggestion ought to be very flexible.

The sum total of these three points is that a conference such as the one provided in S. 1664, is really the only practical way of getting results in the reduction of delay, expense, and volume of records in these cases.

As you can well imagine, the question has been explored during the past 15 years from many viewpoints by many experts and in great depths.

You now have before you the product of all of this consideration.

I have canvassed the members of the Council of the last conference and have heard from all but one; they unanimously advocate the passage of this bill as it is.

Four members of that Council are present in the hearing room this morning. The Honorable Everett Hutchinson, who was formerly

Chairman, is now a member of the Interstate Commerce Commission; the Honorable Manual F. Cohen, who is a member of the Securities and Exchange Commission; the Honorable Max D. Paglin, who is General Counsel of the Federal Communications Commission; and John D. Lane, Esq., who is a private practitioner in Washington. The Executive Director of the Conference, Mr. Maxson, is also here.

Of course, people with different viewpoints and different background can never agree on the precise wording of a bill such as this. Quite frankly, the bill, S. 1664, in some of its details, is not as we would have drawn it.

But we are unanimously of the view that it is a good bill, that it is a major step toward good government, that it will accomplish good results of a major sort. And we very respectfully but emphatically urge that the committee report the bill favorably and recommend its passage.

I would be glad to try to answer any questions that the committee may have.

Mr. WILLIS. We certainly are grateful to you for the history of the final product that is now before us.

I have been given to understand—and if it is not so, I will stand corrected—that there is considerable agreement as to the need for the study, but that certain critical issues exist with respect to the composition of the agency or conference, with respect to participation by Government and non-Government members, the capacity in which conference members shall participate, whether as individuals or as representatives of their respective agencies, and the scope of the studies to be undertaken.

Now, that is natural, that there should be those differences. And if you are not familiar with details, we will get it from someone else, but what is the difference in these respects between the Senate bill and the bill that Chairman Harris presented H.R. 7200? As I understand it, the American Bar Association wants a broader bill than the Budget Bureau.

Now, which is broader in these respects, H.R. 7200 or the Senate bill, do you know?

Judge PRETTYMAN. Well, as I understand it, Mr. Chairman, I think I am correct, S. 1664 is really H.R. 7200 with 17 amendments.

Now, some of those amendments are very small; some of them involve issues. Now, you have stated some of the issues; if I could take them one at a time—I am not sure I recall them in order, but I will take them one at a time.

Mr. WILLIS. I made notes here, composition of the agency or conference to be established with respect to participation by Government and non-Government members; that is, the balance of the membership.

Judge PRETTYMAN. All right. Now on that question, we had in our bill originally drafted by the conference, and it is in the bill that the Budget Bureau sent to the Senate—in other words—it is in H.R. 7200 I take it—some language (the word "preponderantly" was in there at one time) that the conference should be predominantly of Government members.

Mr. LINDSAY. "Preponderantly."

Judge PRETTYMAN. "Preponderantly" of Government members.

At one time we considered, we thought that maybe the bill ought to prescribe a percentage, say 60–40. Now, this bill, S. 1664, before you, now has no such language in it.

Mr. WILLIS. Meaning what, the net result? Who is going to decide it?

Judge PRETTYMAN. That is what makes me satisfied with the bill. I am emphatically, immovably, of the opinion that this conference must be a Government conference. It must be an agency conference. That is what it is supposed to be. It is not supposed to be a body set off somewhere by somebody else; it is supposed to be—this bill is supposed to set up a machinery by which the agencies can examine their own procedures. That is the kind of an animal it is. And I think it is the only kind of an animal that will achieve results.

If some other organization some place, the American bar or some commission or some public outfit, wants to study this subject, it is all right and they can make their own recommendations; but this animal is supposed to be a means by which the agencies, all of them, can get together and study their own problems. Therefore this must be——

Mr. WILLIS. How long have you been connected with this thing?

Judge PRETTYMAN. How long have I been?

Mr. WILLIS. Yes.

Judge PRETTYMAN. I was the chairman of the first committee appointed by the Judicial Conference in 1949. So that—I am not sure of my arithmetic but I think that is 15 years I have been—now, to answer your question, Mr. Chairman, this bill provides for the President to designate the agencies that will have representatives.

The President will appoint the Council, 10 or 11, whatever it is. The Council will pick the outside members.

All right, now, I say that if the President of the United States and Council do not provide enough Government representation on the Conference to achieve the best results, then I miss my guess a long way. I think that is a perfectly proper way to get at it, that the President and the Council appointed by him will have enough appreciation of what the problem is and the necessities, for Government representation to put it in the Conference, to so provide. So I am perfectly satisfied, despite my positive view this must be an agency conference, I am satisfied with the provisions of this bill because I think that is what it will be.

Mr. WILLIS. Which bill?

Mr. LINDSAY. Senate?

Judge PRETTYMAN. S. 1664.

Mr. LINDSAY. Senate bill?

Mr. WILLIS. So you are saying very frankly the elimination of that word "predominantly," or whatever it was——

Mr. LINDSAY. Yes, "preponderantly."

Mr. WILLIS. "Preponderantly"—will not remove the probability that it will be a Government agency?

Judge PRETTYMAN. Of course not. That is exactly my view. I think when the President of the United States and the small group appointed by him get around to considering this problem, they will know what is the fact.

Mr. WILLIS. Now, who would be the outsiders?

Judge PRETTYMAN. Who would be the outsiders?

Mr. WILLIS. Yes.

Give us an illustration.

Judge PRETTYMAN. In the first place, it would be lawyers practicing administrative law, outstanding members of the bar in the administrative field; in the next place, if they follow what was done in the last Conference, there would also be some general practitioners from the bar who have no administrative specialty, outstanding members of the bar.

At this last Conference, there was Mr. Faricy, from St. Paul, a member of the bar from Denver, one of the outstanding lawyers from New York, and so forth; three, four or five of them who had no administrative experience but were general practitioners who knew what was right and what was wrong.

Then we go to the academic field, and the outstanding people in the administrative law field in the United States were members of the other Conference: Walter Gelhorn, from Columbia, Clark Byse, from Harvard, Nat Nathanson, from Northwestern, and so on. Great names in the academic field, administrative law field, they were members.

Then there were several outstanding authorities in the field of government, the science of government. Professor Bernstein, of Princeton, Professor Redford, the head of that department at University of Texas: Professor Latham, who is the Eastman professor of economics at Amherst, such people as that.

The outside representation was a composite of practicing specialists, practicing lawyers not specialists, academic professors of administrative law and students of the science of government.

Mr. WILLIS. You feel these experts, particularly the members of the bar, would draw their clientele sufficiently from business and labor for them to have the views of these groups reflected in Conference proceedings?

Judge PRETTYMAN. Yes. It did in this Conference, from every point of view, the lawyers that represented clients in those respective fields.

Mr. WILLIS. Now, could we move to the second point of apparent difference.

Judge PRETTYMAN. Yes.

Mr. WILLIS. That was the capacity in which the conferees should participate. In other words, should the head of the Department of Agriculture or the head of FCC speak as an individual or as head of an agency? Apparently that is what they are talking about.

Judge PRETTYMAN. That is right. Here again I have a very violent view, Mr. Chairman. This Conference has to be made up of individuals, these people have to speak as individuals and not representatives of their agencies, for this reason: The question that come before such a Conference as this——

Mr. WILLIS. By the way, is that the concept of the bill?

Judge PRETTYMAN. The concept of the bill is that they should speak as individuals.

Mr. WILLIS. Under the Senate amendments?

Judge PRETTYMAN. Yes.

Mr. LIBONATI. Continuity of the activity.

Mr. Justice, in connection with the point the chairman has brought out, has any consideration been given to the overlapping of agencies on jurisdictional questions creating a difference between the concept of their obligations and their purposes? Has that ever been considered in these discussions over these years?

Judge PRETTYMAN. As I understand your point——

Mr. LIBONATI. Toward the elimination, of course, of these overlapping situations, and maybe even the identity of the agency or bureau.

Judge PRETTYMAN. As I understand your question, I do not believe I am able to answer it.

Mr. WILLIS. That might be substantive rather than procedural.

Judge PRETTYMAN. This Conference would stay away from any substantive matter. It would not deal with any specific case. And it would not have any power to change law. They might make recommendations to the Congress.

Now, on the thing you are asking me about——

Mr. LIBONATI. That is what I mean; I mean, after all, everything comes to the Congress that is recommended except those matters that pertain to the jurisdiction given by the Congress to this bureau or agency to function in its obligations in government, or responsibilities in government.

Judge PRETTYMAN. You see, the great bulk of the material this Conference will work on are matters of pure procedure: Who ought to be permitted to intervene; who ought to have authority on interlocutory awards, and so forth, and so forth; how it should be required to handle bulk material and all these kinds of things.

Now, as I understand your question, it would come to be a pretty substantive thing. If it came before the Conference, the way it would come would be a proposal, recommendation be made to the Congress, the Congress do something about it.

Mr. LIBONATI. Like we do with the Judicial Conference.

Judge PRETTYMAN. Yes. In other words, this Conference could and would undoubtedly upon occasion say, "Now here is a matter that we feel we ought to call to the attention of the Congress," and we would do it, but I could not imagine this Conference in and of itself recommending to the agencies direct anything with regard to overlapping jurisdiction.

Mr. LIBONATI. The only reason I ask is that one of the purposes set out here, that this would give new life and new efficiency to the work of our administrative agencies. And I thought that one of the purposes, to economically direct the responsibilities or the operational effects of agencies in accordance with the unity of agencies, in the same jurisdictional matters, to unify the same as you say here, is one of your basic reasons for the legislation, the unification of the work.

The unification of the work I thought would include the unification of agencies that have concurrent jurisdiction over the same subject matter, although different phases of the subject.

Thank you very much, Mr. Justice.

Judge PRETTYMAN. The only thing the Conference would do would be to make a recommendation to the Congress.

Mr. WILLIS. Finally, I understand—if I am wrong, the witness will correct me—there is a difference of approach as to the scope of the

studies. It is my impression the ABA wants the scope to be broader than does the Budget Bureau. For instance, my colleague from New York questioned Chairman Harris about whether or not the military would be involved. I understand that the American bar would extend the scope to courts-martial and military commissions, and to such functions as military, naval, and foreign affairs of the United States, and personnel matters; whereas the Budget Bureau would want those excluded.

Do you know of that? And do you have any views?

Judge PRETTYMAN. Yes; I know of it, and I have views on it.

Now, I do not think anybody thinks that this Conference would have any jurisdiction over military affairs or foreign affairs. I think that that is out.

The point of difference is that the Bureau of the Budget—I wish I had the text of that before me, but do not—the Bureau of the Budget would exclude certain areas which involve loans and things.

Mr. WILLIS. Involving what?

Judge PRETTYMAN. Loans and contracts. That sort of thing.

Mr. WILLIS. Such as what? It escapes me how it would involve contracts, Government contracts.

Judge PRETTYMAN. Well, the procedure by which Government contracts are awarded.

Mr. WILLIS. Oh. Well that is generally now under GAO, is it not? General Accounting Office?

Judge PRETTYMAN. Yes; I guess. The procedure by which loans, and so forth, are made.

Now, they would cut all of that out of the bill, cut all of that out of the Conference.

Now, our position, sir, is we think this bill ought to be just as broad as the Administrative Procedure Act. And we say——

Mr. LIBONATI. You mean broader than Harris' bill?

Mr. WILLIS. No.

Judge PRETTYMAN. No, I do not think so.

Mr. WILLIS. As broad as the Administrative Procedure Act.

Mr. LIBONATI. Oh.

Judge PRETTYMAN. H.R. 7200?

If you are talking about 7200, 7200 has the exact coverage of the Administrative Procedure Act.

Is that right?

(Discussion off the record.)

Judge PRETTYMAN. The bill which is before us is as broad as the Administrative Procedure Act, and that is the way we think it ought to be.

The Bureau of the Budget wanted to exclude—of course, they will state what they want—they wanted to exclude making of contracts and making of loans, and two or three other matters.

Now, our point on that is very definite and very clear; which is: Why should not a Conference such as this, composed in large measure of Government people interested in procedure, examine the procedures by which loans were made or contracts were awarded?

Why should not that be examined? Why should the procedure for making loans and making contracts be behind closed doors where

nobody can look at it? Nobody can change it—I mean this Conference could not change them but——

Mr. LIBONATI. But, Justice, would not that vest in you a reviewing power of operations of Government?

I can understand why you want to make this a Federal operational unit. You would be more a type of reviewing body then on operations in Government?

Judge PRETTYMAN. No. Let me give you an illustration, Mr. Congressman.

Mr. WILLIS. I think he is agreeing with you.

Mr. LIBONATI. Yes.

Judge PRETTYMAN. Let me give you an illustration.

Right in this area, it came to the attention of the conference that there is what is called a blacklist in Government contracting, and any agency has the power to blacklist a contractor. They could say, for reasons you do not have to know about—and they do not have to give you any statement of the reasons, or hearing or anything, just said, "you cannot have any more Government contracts as far as we are concerned." And that list is circulated around among all of the agencies, and these contractors are blacklisted.

Now, we said: "Wait just a minute on this, that is not right. That is not the fair and proper way of doing it. If you are going to blacklist the contractor, you ought to give him a statement of the reasons and give him an opportunity to tell his story."

Now, that's the right way to do it.

Mr. WILLIS. I am familiar with this.

Judge PRETTYMAN. You are familiar with that?

Mr. WILLIS. Yes. I am familiar with that because I made a speech on that subject.

Judge PRETTYMAN. I hope you supported the position of the Conference. I am sure you did.

Mr. WILLIS. I did not know the Conference had anything to do with it, but I am supporting what you said.

Judge PRETTYMAN. The Conference made a detailed study of that subject and brought in a report, which is as I have said before, if you blacklist a contractor, you should give him a statement of the reasons and give him a chance to be heard.

And it was, I think, unanimously adopted by the Conference, and the procedures have been amended.

Now, that sort of thing with regard to contracts, the procedure for handling contracts, the procedure for handling loans and things, ought to be subject to examination by somebody. That is what we think.

Now, Mr. Chairman, I did not finish what I was going to say about the representative point, about whether these people ought to be representatives. I said in my opinion they have to be individuals for a very simple reason. The subjects that come before this Conference concern procedure. Now, if the man there from the Treasury Department has got to go back, if he cannot speak on the subject, take any position on it, but he has got to go back and find out what the position of the Department or Treasury is on this point, there just would not be any conference: you would never get anywhere in that.

In the next place, you see, I very much doubt if the Department of the Treasury has any position on such a point as that or such things as that. We just think in this Conference, no person ought to act as a representative of the agency from which he comes; otherwise there just won't be a conference.

The idea of the Conference is it is composed of people who know this game, know what is talking place, know all this, and are patriotic people; and they are imbued with their own agency's ideas, of course, that seeps through them. But they as individuals contribute their own character, their own brains to the problem.

Mr. WILLIS. Obviously the jurisdictional scope of this bill under any version is vast. So it leads me to this question: I take it that there is no limit to the life of the Conference and it is contemplated it will be with us for a long time; is that the idea?

Judge PRETTYMAN. That is the idea now. There have been two limited Conferences of this sort, one established by President Eisenhower, and one established by President Kennedy had an 18-month life, specifically. He said "at the end of 18 months." That was for experimental purposes, to find out whether this idea was worthwhile or not.

Both of those Conferences said yes. So this bill would put the Conference on a continuing basis.

Mr. WILLIS. Now, a while ago someone inquired about the cost of this bill. Were we talking per annum cost since there is no limit to its life?

Mr. LIBONATI. Yes.

Judge PRETTYMAN. This bill before us contemplates a continuing organization.

Now, let me say this about the cost, the Congress made two appropriations to the Conference. We turned a large part of that money back, didn't spend it.

The basic cost of the Conference would be very, very small. There would be the salary of the Chairman and of the staff, and then the travel money for the outside members not in the government. Nobody gets any pay except the Chairman and the permanent staff—very small.

Now, here is where the money comes in, where we spent the money and where the money of this Conference would go; that is, when we had a specific problem, let us say, for example, the Conference undertook to study the ratemaking procedures of those agencies which fix rates, and the Conference embarked on a study of that general procedure; the Conference hired an expert—they were all university people—hired an expert on a per diem basis, and he went to work and made a study in depth of that subject.

Sometimes it took him 3 or 4 months, and he was paid a per diem. Now, that is where the money would be in this Conference.

If the Conference did not make any studies, there would not be any money. If the Conference undertook some major studies, there would be some money, some cost.

But the amount of the studies the Conference could make would be determined by the amount of money that the Congress wanted to give them.

Mr. WILLIS. One final question, because I do not want to monopolize the time; does the bill provide a time limit within which the Commission should make a report to the Congress?

Judge PRETTYMAN. I think the bill provides a yearly report.

Mr WILLIS. Oh, does it?

Judge PRETTYMAN. I think it should. I think it does. It is contemplated to report to the President, report to the Congress.

Yes; that's in the bill, Mr. Chairman. That is in the bill, annual report to the Congress and annual report to the President.

Mr. WILLIS. Mr. Kastenmeier?

Mr. LIBONATI. Just a moment. Justice, do you favor the American Bar Association bill, or Harris' bill, or the Senate bill?

Judge PRETTYMAN. I am not going to speak for the American Bar Association, but the American Bar Association's——

Mr. LIBONATI. No; I mean which do you favor?

Judge PRETTYMAN. We are all together.

Mr. LIBONATI. You have been with this subject for 15 years. Now, which bill do you think in your conception will operate in accordance with the goal set by those who have studied this problem, including yourself?

Which bill do you feel meets the measure that will bring about what you determine the purposeful nature of this legislation?

Judge PRETTYMAN. I think S. 1664 would do it.

Mr. WILLIS. Which in turn is H.R. 7200 as amended?

Judge PRETTYMAN. As amended. Now, as to the American Bar and us, the American Bar is here today, but as I understand it, we are together. There is not any difference.

Mr. LIBONATI. Of course, it goes without saying you accept any bill which will open the door to the legislation as contemplated in all the bills?

Judge PRETTYMAN. That is pretty near right.

Mr. LIBONATI. I see. And you think that that one bill incorporates what you feel is necessary to carry out the prerogatives of the legislation?

Judge PRETTYMAN. That is right.

Mr. LIBONATI. Thank you, Justice.

Judge PRETTYMAN. Frankly, Mr. Congressman, here is what I think about it: If this Conference is established and organized, let us say under this bill, time will tell whether it is any good or not.

Mr. LIBONATI. You can always come back for amendments.

Judge PRETTYMAN. That is right, you can always come back. If the Conference turns out to be no good, it will disappear.

Remember the Judicial Conference started out just about like this, it did not have any statute to start with; it was just a conference of circuit judges and they got along.

In the years that went by, they decided they needed legislation—but it grew because it was good. It produced good results. That is what will happen here.

Mr. LIBONATI. Thank you.

Judge PRETTYMAN. If it produces good results, it will be wonderful.

Mr. KASTENMEIER. Mr. Chairman, following up on what Congressman Libonati said, do I understand that you would favor a bill which would not follow what originally you described as being important—namely, that this be an agency conference? If the makeup of the bill that the House would consider were such that it would no longer be an agency conference, nonetheless would you favor such a bill?

Judge PRETTYMAN. If this committee came up with a bill which provided for a conference that would not be an agency conference, I would oppose it.

Mr. KASTENMEIER. You would oppose it?

Judge PRETTYMAN. Yes. I do not think it is any good.

The object of this is to create a forum, a place, machinery by which the agencies can get together and discuss their mutual problems. If they are not going to do that, I see no purpose.

This bill does not do that. This bill puts it in the hands of the President and Council appointed by him, and it will be an agency conference the way I see it.

Mr. KASTENMEIER. The reason I asked that, because we perhaps will have other recommendations which may depart from the agency conference standard that you would propose, and that is why I wondered how you stand on such a bill.

I have another question, in terms of the personnel that you would like to see prospectively invited into the Conference or the Assembly. You described a number of well-known people who make such a contribution.

Do you also foresee the inclusion of people who essentially represent industry which might be regulated by one of the commissions?

That is to say, do you think the Defense Contractors' Association ought to have a member? Do you think the oil and gas industries ought to have a member? Do you think the broadcasting industry ought to have one of their experts as a member of the Conference?

Judge PRETTYMAN. Yes.

Mr. KASTENMEIER. Do you think that this would comply with page 2 of the bill, S. 1664, "assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution"?

Do you think such members of the Conference would be objective?

Judge PRETTYMAN. Well, there are several answers to that. In the first place, this Conference is not dealing with substantive law; the Conference is not going to try to write any substantive law. It is talking about procedure.

Now, the lawyers that have clients before them know pretty much what the trouble with the procedures are. They are not talking about any one particular case, but they are very objective when it comes to trying to get good procedures, things that will move things along, get a fair answer and that sort of business.

When you pick just two or three or four or five, you get pretty high-class people. There is no difficulty along that line.

And you have them all.

Mr. KASTENMEIER. If that is a test, Judge, can you think of anyone who would not be objective in terms of procedure? The only people who might lack objectivity would be someone subject to such procedures.

Judge PRETTYMAN. I do not think of any class of people who are not what you would call objective in regard to procedure. Maybe if they have a particular case where they want a particular continuance, and so forth, they may not be objective. But such a thing as that in a particular case would never come before this Conference.

Mr. KASTENMEIER. I thank you very much.

Mr. WILLIS. This question occurs to me: Is it true that nowhere does the bill set a numerical limit on the composition of the Conference?

Judge PRETTYMAN. No, there is no numerical limit. The expression of the bill, if I can put my finger on it, is in section 4(b).

Mr. WILLIS. Let us approach it this way: Mr. Harris said a while ago that he thought that the number would be something between 60 and 70. I wonder where he got that figure?

Judge PRETTYMAN. Yes. The Conference that was just in existence had 85 members, including Council.

Mr. WILLIS. Could you see any objection in some experts finding out what the number should be and putting a number in this bill?

Judge PRETTYMAN. I think you would have trouble, Mr. Chairman. The bill names "The Chairman of each independent regulatory agency."

Mr. WILLIS. That is named.

Judge PRETTYMAN. That is numbered. Everyone knows who the independent agencies are.

Mr. WILLIS. That is all right.

Judge PRETTYMAN. The next paragraph:

The head of each executive department or other administrative agency which is designated by the President.

So the provision of the bill is that the President will designate what agencies have regulatory functions, or rulemaking, adjudicatory functions.

Mr. WILLIS. That again, you cannot go beyond that definition anyway.

Judge PRETTYMAN. That is right.

Mr. WILLIS. So that is a limit if one can find out who they all involve.

What about the other members, particularly the assembly?

As I understand, Judge, there is no limitation there.

Judge PRETTYMAN. Now, then, as to the other members, there is no limit in here—and that is where you get to this thing we have been talking about——

Mr. WILLIS. That is what I am talking about.

Judge PRETTYMAN. In this bill, the other members would be selected, that is the non-Government members would be selected by the Council. And the only thing in this bill itself—

other members and such members as will assure full representation of private citizens.

As I say, at one point, we thought about putting in there 60–40, that there be non-Government representation of 40 percent of the Conference, but we finally abandoned that as pretty impractical.

Mr. WILLIS. Do you think that it is appropriate to refrain from specifying the number of these outside members because they will not be paid, except their expenses?

Judge PRETTYMAN. No; I don't think so, sir. I mean I do not think that the payment of compensation would have any effect on these people.

Mr. WILLIS. You missed my point. My point is, as I understood from you, these members would not be paid a salary; they would be paid their expenses. Is that correct?

Judge PRETTYMAN. Travel expenses.

Mr. WILLIS. My point is, is the fact that they are not paid a salary reason enough not to set a limit on their number, for the reason that not much expense is involved?

Judge PRETTYMAN. No.

Mr. WILLIS. This is very unusual, not to put a limit on membership. I have never seen it done before.

Mr. LIBONATI. We could not pass that for ourselves, let alone for strangers.

Judge PRETTYMAN. In the letter to the President from the Conference, our report recommending establishment of this Conference, we suggested that it should be composed of not more than 80 maximum.

Mr. WILLIS. That is why I would like a figure. In executive session, we may have to wrestle with an amendment setting a limit. We want your mature judgment. We do not want to pick a figure out of the air.

Judge PRETTYMAN. The mature judgment of the Conference was 80. You might make it 70, if that is what you think it is.

Mr. WILLIS. Yes.

Judge PRETTYMAN. We are talking about the Assembly, of course.

Mr. LIBONATI. Did not the President set in his directive a number of 50? In 1961, was it, that he issued his directive? President Kennedy?

Judge PRETTYMAN. I do not think so, sir, because we went to 85. I do not think he set it.

Mr. LIBONATI. This is Executive Order No. 10934, President Kennedy established the Administrative Conference of the United States, that consists of a council of 11 members, general membership, and so forth, from the very descriptions of the persons qualified, and that was subject to be not less than 50 persons—be not less than 50 persons. And then it prescribes who the majority of them should be and qualifying situations.

Judge PRETTYMAN. Not less than 50.

Mr. LIBONATI. Not less than 50. Now, of course, the purposes were there to have a representative body, but here now we are appropriating moneys in a set sum, we are asking for an appropriation of a set sum through this enabling act.

Now, how can we possibly expect to answer the question, How much this is going to cost? It is a fact that you can have as many members as are invited. You then must pay travel expenses, and, of course, expenses while they are in the city where you are holding your conferences.

Now, this is a very important item and setting up costs is well known to the Members of the Congress who are well acquainted with that item. In this case it will amount to thousands of dollars. And the question of giving the power to any group or anybody to invite whom they want indiscriminately, just because they qualify to attend a conference, would certainly be stretching our legislative prerogative pretty far in the eyes of the Members of Congress, who demand very explicit limitations on quotas of membership for accomplishing this work.

Therefore it would be most preferable if a limitation were made on the membership, "no less than 50, no more than 200," if you so

desire. Or refer it back to the Congress to approve the number, if you want to send in a list for approval. That way it could be acceptable as a reasonable request.

But ordinarily, Justice, this bill could not pass without this prescription on limitations.

Judge PRETTYMAN. Frankly, from that viewpoint, I had never thought of it. We have fought over the number we were going to have——

Mr. WILLIS. Percentagewise?

Judge PRETTYMAN. Yes, percentagewise, as to who was going to have a voice in the Conference, that is what we were thinking about; not from the other point.

Mr. LIBONATI. When our chairman takes the floor on the passage of this bill, they will ask him that question. He is absolutely "Kaput." He cannot answer the question, and it will defeat the bill.

Judge PRETTYMAN. Heaven forbid that that would happen.

Mr. LINDSAY. Judge, I would like to ask you just three or four questions here. Let me say first that the last time this subcommittee was having a hearing before a group of lawyers and I cross-examined witnesses pretty vigorously to see if there were bugs in the bill; I later received letters from the bar asking why I was in opposition to the bill. I replied by saying that when I argued cases in the Supreme Court, the Justices who cross-examined me the most vigorously usually voted with me, and those who sat there and smiled benignly usually voted against me.

Judge PRETTYMAN. I hope if you give me a bad time, Mr. Congressman, you will hear from the bar.

Mr. LINDSAY. The Senate bill provides that there is a council to be appointed by the President consisting of 10 members. Is that correct?

Judge PRETTYMAN. Yes, sir.

Mr. LINDSAY. Now, who are those council members? Where do they come from?

Judge PRETTYMAN. Wherever the President picks them from.

Mr. LINDSAY. They can be private or public?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. They can be head of the FCC or President of the National Broadcasting Co.?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. They are not paid?

Judge PRETTYMAN. No, sir.

Mr. LINDSAY. They are part time, in other words?

Judge PRETTYMAN. Well, they are just not paid. They get expenses and that is all.

Mr. LINDSAY. It is not a full-time job, however?

Judge PRETTYMAN. No, no, no.

Mr. LINDSAY. Then as I understand it, the members of the assembly are appointed by the chairman of the council?

Judge PRETTYMAN. With the approval of the council.

Mr. LINDSAY. With the approval of the council?

Judge PRETTYMAN. In effect by the council, yes.

Mr. LINDSAY. Then the chairman is all powerful. If he wanted to load it up one way or the other, he could, could he not, assuming

the council went along? If he wanted to load it up so it was predominantly in the private sector, he could; or if he wanted to load it up so it was predominantly in the public sector, he could.

Is that right?

Judge PRETTYMAN. I think theoretically that is so, under this bill.

Mr. LINDSAY. In theory that is true?

Judge PRETTYMAN. Yes. My attitude is as a practical matter, that it is impossible. A council appointed by the President would not come to any untoward result.

Mr. LINDSAY. The person appointed by the President as chairman is absolutely the key?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. If you get the right person, it can be successful; if you get the wrong person, it could be not only a failure, but it could conceivably be a corruption of the public interest.

Judge PRETTYMAN. Well, that would be kind of extreme, if you contemplate the President would pick this person, and be confirmed by the Senate. Yes, theoretically that is correct; the chairman is the key figure in this thing.

Mr. LINDSAY. Then when you are talking about the size of the assembly, of course, this relates very directly on the question of whether it is to be predominantly Government or not; because if you automatically have heads of departments and regulatory agencies, and maybe the general counsel is involved, right away you have got a very, very large group.

Judge PRETTYMAN. That is right. Twice we tried to set up a conference like this: the organization committee that President Eisenhower set up in his administration and the council under designation of President Kennedy. Both times we tried to set up a smaller conference. We would have liked to have had a conference with 50 or 60. But when you get the list of all the agencies that you have got to have in here, just as you say, you have got quite a list to start with; it just comes out somewhere around 80–85.

Mr. LINDSAY. If you have the broader version bill, which includes the Pentagon, all the armed services and all the contracting arms—if you have the Pentagon alone covered—you have a huge area to be concerned about. Their procedures alone could use up the time of the Conference.

Judge PRETTYMAN. They had a member, Mr. Congressman, of this last Conference, Cyrus Vance, who has gone up the ladder since he was a member of this Conference. He was chairman of one of the committees of this Conference.

Mr. LINDSAY. I might say, parenthetically, I am in complete agreement with you on this question of members speaking in their individual capacities. How else are they going to shake the establishment? It is just a vicious circle otherwise, I would think.

Would it be possible for you or for other witnesses here to submit for the record a very detailed statement of the cost of the experimental administrative conferences that were held?

Judge PRETTYMAN. I think we have those figures in the room.

Mr. LINDSAY. Because I can assure you that if we get to the floor with this bill we will be cross-examined down to the last inch on the

question of cost. We must have a record. We should have a submission for the record, if it can be prepared, of projected costs. The Senate bill for example, what might it cost?

If it will be a projection of what is already the experience under the Eisenhower and Kennedy approaches, let us have it. Because we will be asked to point to that on the record if this matter gets to the floor.

Judge PRETTYMAN. We can furnish that very easily. We do not have it in the room but we will furnish it.

(Subsequently the following was received:)

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES,
Washington, D.C., March 6, 1964.

Hon. EDWIN E. WILLIS,
House of Representatives,
Washington, D.C.

DEAR MR. WILLIS: During the testimony of Judge Prettyman before your subcommittee yesterday, on H.R. 7200, H.R. 7201, and S. 1664, you requested that the subcommittee be furnished information as to the expenses of the Administrative Conference of the United States established by President Kennedy on April 13, 1961. This letter responds to your request.

As Judge Prettyman indicated in his testimony, the 1953–54 Conference called by President Eisenhower operated without funds. Travel expenses incurred by private members located outside of Washington were borne by those members, and staff assistance and other services were contributed by the participating agencies. For example, the Department of Justice, through the Federal Prison Industries, printed the Conference's preliminary report of January 1954 and its final report of January 1955. Therefore, no accounting of the actual cost of that operation is available.

The 1961–62 Administrative Conference, however, was furnished money for its activities. In order to provide funds with which to operate until an appropriation for the Conference could be considered by the Congress, the Executive order establishing the Conference provided that the participating agencies furnish assistance in accordance with section 214 of the act of May 3, 1945 (59 Stat. 134, 31 U.S.C. 691). Pursuant to that statute the Treasury Department, with the approval of the Bureau of the Budget, established an interagency group fund to which participating agencies contributed $34,500 for expenditures in fiscal year 1961, and $30,000 for the early months of fiscal year 1962. In October 1961, the Congress appropriated $150,000 for Administrative Conference activities during the remainder of that year, and subsequently it appropriated $100,000 for expenditures during the 6 months of fiscal year 1963 in which the Conference would be in operation. Thereby, a total of $314,500 was made available for the entire operation.

The 1961–62 Administrative Conference spent a total of $223,517.20, or approximately 71 percent of the total funds available, returning to the Treasury an unobligated balance of $90,982.80. A schedule showing the nature of the expenses is attached. These figures do not include the salaries of the Director of the Office of Administrative Procedure, Department of Justice, and two attorneys and two secretaries from that Office, who served as the permanent full-time staff of the Conference. Their services were furnished by the Attorney General pursuant to direction contained in section 4 of the Executive order establishing the Conference. Similarly, the schedule does not indicate the cost to the Government of the time spent by agency personnel in Conference work.

If there is other information which we can furnish, we shall be pleased to receive your request.

Sincerely yours,

WEBSTER P. MAXSON,
Executive Secretary,
Administrative Conference of the United States.

Expenses of the Administrative Conference of the United States, established by President Kennedy by Executive Order 10934, Apr. 13, 1961

	From 1961 inter-ageney group fund of $34,500 [1]	From 1962 inter-ageney group fund of $30,000	From 1962 appropria-tiou of $150,000 (October-June)	From 1963 appropria-tion of $100,000 [2] (6 months)	Total
Personnel:					
Per diem compensation of intermittent consultants ond their assistants	$1, 100. 00	$8, 836. 37	$63, 064. 64	$40, 567. 44	$113, 568. 45
Compensation of temporary, full-time employees			12, 186. 43	12, 734. 40	24, 920. 83
Personnel benefits		11. 25	921. 90	937. 74	1, 870. 89
Offices and equipment:					
Rent, communieations, and utilities			314. 52	387. 91	702. 43
Furniture, books, equipment, and supplies	3, 608. 72	33. 00	2, 461. 56	378. 95	6, 482. 23
Trovel: Transportotion and per diem in lieu of subsistenee	1, 667. 61	3, 482. 46	17, 091. 45	12, 632. 73	35, 474. 25
Printing and other services: Duplicating, printing, and other serviees	105. 58	473. 70	15, 231. 75	24, 687. 09	40, 498. 12
Total expenditures	6, 481. 91	12, 836. 78	111, 872. 25	92, 326. 26	223, 517. 20
Unobligated balance	28, 018. 09	17, 163. 22	38, 127. 75	7, 673. 74	90, 982. 80

[1] Pursuant to sec. 9 of the Executive order, the Treasury Department established an interagency gro up fund under 31 U.S.C. sec. 691, to which participating agencies contributed to meet the expenses of the Conference until Congress could consider and act upon an appropriation request for this octivity. Congress appropriated $150,000 in October 1961.

[2] Because the Executive order directed the Conference to finisb its work ond render its final report before Dec. 31, 1962, funds were needed for only the 1st half of fiseal year 1963 ond the appropriotion request was reduced accordingly.

U.S. COURT OF APPEALS,
Washington, D.C., April 3, 1964.

Hon. EDWIN E. WILLIS,
House of Representatives,
Washington, D.C.

DEAR MR. CONORESSMAN: At the hearing the other day before your Subcommittee No. 3 on S. 1664, some suggestions were made that the hill ought to contain limitations in respect to (1) the membership in the Conference, (2) the authorized funds, and (3) the size of the staff. Some of our Conference council thought information along those lines might be helpful. We enclose a memorandum for that purpose.

Congressman Oren Harris, who appeared as a witness before your subcommittee, indicated a similar interest in the same questions. We are, therefore, sending him a copy of this memorandum.

Sincerely yours,

E. BARRETT PRETTYMAN.

MEMORANDUM ON QUESTIONS RAISED IN THE HEARINGS ON H.R. 7200, H.R. 7201, AND S. 1664

In the subcommittee's hearings on March 5, 1964, on proposals to establish a continuing Administrative Conference, there were questions concerning (1) the size of the proposed Conference, (2) the size of its full-time staff, and (3) the estimated cost of the proposed activity. The experience of the 1961–62 Conference established hy President Kennedy, as well as that of the earlier Conference of 1953–54 estahlished hy President Eisenhower, have heen reviewed as they bear upon these matters. This memorandum, hased upon that review, is intended to provide further information with respect to these three questions.

1. THE MEMBERSHIP OF THE PROPOSED CONFERENCE

Notwithstanding the experience gained from the two 18-month Conferences of 1953–54 and 1961–62, it is reasonable to expect that the proposed organization, if established, will evolve to some degree, like any other new organization, during the period of its early operation. In an effort to assure responsible control of the size and composition of the proposed organization, and at the same time, allow the flexihility necessary to permit desirable development, the bills

would place the responsibility for determination of the membership on the President and the 11-member Council to he appointed by him, thus leaving the matter of size undetermined in the orgauic statute. An adequate answer to the question of size necessariiy must he predicated upon an examination of the administrative conference concept, and indeed the concept itself predetermines the appropriate size of the membership within general iimits.

The Idea of an admiuistrative conference has beeu some 15 years in the making. Its central thesis is that responsihility for fair and efficient procedures must rest squareiy upon the ageucies themseives, and not on some extrinsic authority superimposed upon the agencies; that the importance of the administrative process to our national economic deveiopment and to the miilions of private iudividuals and business affected by the steady flow of agency rules and orders demands continuing attention to procedurai deficiencies, rather than occasional or sporadic efforts toward improveiuent; that the real hope of substantial gains in this area lies in combined judgments based upon combined experience, instead of myopic individual procedurai iuventions; that such judgments must have the henefit of the whoie range of knowledge and experience in this area of governmental activity, not reiying upon the viewpoints of a few schoiars or a smaii group of experts in government; and finally, that the administrative process, now an institution of government, must develop procedural consistency and coordination to assure uuiversaiity of procedural guarantees, replacing the present fragmentation and resulting uncertainty of concepts of fairness and due process.

The essence of the Conference idea is the comprehensiveness of its intelligence and judgment. To be effective, the experience upon which Conference recommendations are hased must be complete, and the deliberations whch constitute the deveiopment of those recommendations must embrace the whole spectrum of informed views. No individual agency, organization of practitioncrs, committee of the major regulatory agencies, or combination of cxecutive agencies is equal to the task. Limitatious upon participation to a particular segment or segments of the administrative process can serve oniy as limitations upon the experience which provides the hasis for recommendations nnd upon the extent to which the judgments which go into the recommendations are informed judgments. Current procedurai probiems are virtuaiiy limitiess in their number, their importance, and their compiexity. Substantial improvement will be accompiished only with the heip of aii of the interests invoived. Therefore, the Conference shouid include in its membership aii of the agencies which have suhstantial regulatory, benefit, and contracting responsibiiities. The conviction which underiies this conciusion is evidenced hy the universal support of the Conference idea.

On the other hand, the organization should not be encumbered hy the membership of persons only incidentally interested in its subject matter. In fairness to the memhers who are vitally interested, and in the interests of the efficiency of the organization, dilution of the membership must be avoided. In short, the Conference shouid be as large as may he necessary to encompass the full range of knowledge and experience, and at the same time, as smaii as this objective will permit.

Congress has wideiy distrihuted throughout the Federal estabiishment authority to determine private rights and ohiigations through agency investigations, adjudications, and rulemaking, ratemaking, and licensing procedures. Each of the 10 Cabinet departments has heen deiegated substantial responsibilities of this nature, and several of these departments have 2 or more separate administrative agencies within them. For exampie, the Department of Agricuiture inciudes the Agricultnrai Marketing Service, the Stabiiization and Conservation Service, and the Agricuitural Rescarch Service, each with a variety of reguiatory responsibilities. The Department of Commerce includes the Bureau of International Commerce, with its import and export control programs, the Maritime Administration, and the Patent Office, the Department of Defense, in addition to its vast contract review operations each year determines thousands of cases involving the correction of miiitary records of vitai consequence to veterans and their families. The Chief of Engineers licenses construction in and over waterways. The Department of Health, Education, and Welfare includes the Social Security Admiinstration and the Food and Drng Administration. In the Treasury Department, the Coast Guard licenses merchant seamen, and the Internal Revenue Service controls alcohol and tobacco tax permits. The Interior Department inciudes the Bureau of Land Management and the Bureau of Indian Affairs.

The seven major regulatory agencies within the jurisdiction of the Committee on Interstate and Foreign Commerce represent the core of the administrative process. Other major independent agencies are the National Labor Relations Board, the Federal Maritime Commission, the General Services Administration, and the Veterans' Administration.

Other agencies which should be included in the Conference membership are the Atomic Energy Commission, because of its potential as an important regulatory agency in future years, the National Aeronautics and Space Administration, because of its contracting responsibilities, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Small Business Administration, the Federal Coal Mine Safety Board of Review, the Subversive Activities Control Board, the Railroad Retirement Board, and the Civil Service Commission, because of its responsibilities with respect to Federal personnel problems and their importance in agency operations. In view of the total number of departments and agencies involved, full agency participation would require approximately 50 Conference members from the Federal service.

An essential feature of the Conference concept is that the organization shall have a sufficient infusion of outside experts from the practicing bar, scholars in law and government from academic life, and others specially informed in administrative procedures to assure objectivity and diversity of viewpoint. Again, no mere handful of professors and lawyers can provide the breadth of experience necessary. The number of members who are not Government officials should constitute somewhere between one-third and one-half of the total membership.

Section 2 of Executive Order 10934 directed the 1961–62 Conference to report to the President by December 31, 1962, "suggesting appropriate means" to be employed in the future for the purpose of improving the procedures of administrative agencies. Responding to this direction, the Conference, by letter to the President dated December 17, 1962, recommended the establishment of a continuing Administrative Conference consisting of a full-time Chairman, a Council of the Chairman and 10 other members appointed by the President, and "not more than 80" additional members from Government service and from private life. The total membership contemplated by the recommendation, therefore, was not more than 91. This figure was developed from careful study of the nature and distribution of regulatory and other administrative authority among the Federal agencies. It accords with the underlying concept, and the subcommittee may wish to consider providing this number as a maximum in the bill.

2. PERMANENT STAFF

Because the Conference would be a part-time, uncompensated activity for all of its members except the Chairman, the only permanent staff would be that assigned to the Chairman. In addition to doing the work incident to his functions as Chairman, the staff would serve as secretariat to the Council, the Conference, and its committees. It would conduct research undertaken by the Chairman and would provide the core of the research staff of the various committees of the Conference, working cooperatively with agency employees in the development of information and reports needed by the committees in their studies. It is estimated that these functions will require an Executive Director (GS–17), who will coordinate the work of all of the Conference committees and provide supervision over all employees, a professional staff of four attorneys (two GS–15, one GS–14, and one GS–12), four secretaries (one GS–9, one GS–7, and two GS–5), and one clerk (GS–4).

The total cost for personnel compensation of permanent employees, therefore, is estimated to be approximately $101,000, plus the salary of the Chairman ($20,500). Without such staff, it is evident that the Chairman would be unable to perform fully the functions assigned to him by the proposals, and experts and consultants employed on a per diem basis to assist the committees of the Conference would be required to conduct research in Washington which could be performed by full-time employees, at a cost much less than the per diem rates paid such experts and consultants.

The above figure would not be entirely a new expenditure. For the past 7 years the Justice Department appropriation has included an item of $50,000 for the operation of the Office of Administrative Procedure in that Department. This is the Office which served as the secretariat to the 1961–62 Conference and conducted a part of the research incident to its work. Because the functions assigned to the Chairman by the bills now before the subcommittee include the

functions of the present Office of Administrative Procedure, it is assumed that the Justice Department will close the present Office upon the establishment of the Office of the Chairman.

3. ESTIMATED COST

The 1953–54 Conference called by President Eisenhower operated without an appropriation. Its expenses were borne by its members and by participating agencies, and therefore no accounting of the cost of that activity is available. The 1961–62 Conference, however, was furnished money for its operations, and a fairly reliable estimate of the cost of the proposed continuing Conference may be developed from the 1961–62 experience.

In order to provide funds with which to operate until an appropriation for the 1961–62 Conference could be considered by the Congress, the Executive order establishing the Conference provided for assistance from participating agencies in accordance with section 214 of the act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691 (1958)). Pursuant to that statute the Treasury Department, with the approval of the Director, Bureau of the Budget, established an interagency group fund to which participating agencies contributed $34,500 for expenditures in fiscal year 1961, and $30,000 for the early months of 1962. In October 1961, the Congress appropriated $150,000 for Administrative Conference activities during the remainder of that year, and subsequently it appropriated $100,000 for expenditures in the 6 months of fiscal year 1963 during which the Conference would be in operation. Thereby a total of $314,500 was made available for the entire 18-month operation.

The 1961–62 Administrative Conference, over the full 18-month period, spent a total of $223,517.20, or approximately 71 percent of the funds available, returning to the Treasury an unobligated balance of $90,982.80. These figures do not include the salaries of the Director, Office of Administrative Procedure, Department of Justice, or the full-time professional and clerical staff of that Office, which provided the full-time staff of the Conference. Their services were furnished by the Attorney General pursuant to direction contained in the Executive order establishing the Conference. Similarly, of course, no part of the expense of the Chairman's office is included in these figures.

The 1961–62 Conference divided itself into nine standing committees, each with its own subject-matter area. The committees were furnished the part-time services of acknowledged scholars of national reputation, who guided the committees' research activities and prepared committee studies. Some of these scholars had the assistance of younger faculty members and incidental secretarial services on their own campuses. In addition, the full-time staff of the Office of Administrative Procedure was augmented with a few temporary, full-time professional and clerical personnel to conduct research in Washington and to provide necessary services to the several committees. Compensation of these staff members, totaling $138,489.28 for the entire 18-month operation, represented the largest item of expense. Correspondingly, their contribution was responsible in large measure for the success of the operation, and it seems reasonable to assume that similar employment of experts from academic life will be found to be highly beneficial in the proposed continuing organization.

Past experience has demonstrated that the most satisfactory organization of an administrative conference into committees is accomplished by a division along functional lines. The proposed organization probably should have 9 or 10 standing committees thus constituted, with a few occasional ad hoc committees for consideration of special problems. The number of committees is not likely to be affected by the size of the Conference. Whether there are 65 or 100 members, the logical division into areas of interest remains unchanged. Per diem compensation of scholars employed to conduct research and prepare studies for the use of the committees represents the greatest variable in any estimate of the cost of a conference. As is indicated above, the number of problems which merit attention is virtually limitless. Any committee of the Conference might undertake as much or as little as its facilities and funds will permit. Therefore, no definitive basis for an estimate of the cost of compensation of part-time experts and consultants is possible. Based upon the 1961–62 experience, it may be reasonable to suggest that the estimated cost of this item be set at $8,000 per standing committee or perhaps a total of approximately $80,000 per year.

The next largest item of expense in the 1961–62 experience was duplicating, printing, and related services, which totaled $40,498.12 during the entire 18-month effort. Because the number of committees contemplated is much the

same as in the 1961–62 experience, and since these costs will not vary according to the size of the Conference, it may be reasonable to assume that approximately $27,000 per year will be needed for duplicating and printing of committee and Conference studies and reports.

Travel expenses, of trips to Washington by private members located in other cities, for committee meetings and Conference sessions, and by experts and consultants from universities throughout the country who conducted research in Washington and attended committee and Conference meetings, represented the third largest item in the cost of the 1961–62 activity. Transportation and travel per diem in lieu of subsistence totaled $35,474.25 during the 18 months of the operation. Because of the value to that operation of the staff assistance furnished by university faculty members, it is likely that the same kind of staff arrangements will be made by a continuing organization. However, a continuing Conference might meet in plenary session only twice a year, instead of every 3 months as the temporary Conference did, and Council and committee meetings could be expected to be correspondingly less frequent. The number of trips to Washington by university scholars for purposes of research on behalf of Conference committees also would be decreased. Accordingly it may be reasonable to reduce the amount estimated to be necessary for travel to approximately $18,000 per year.

Office space, furniture, books and equipment, communications, utilities, and incidental personnel benefits amounted to a total of $9,055.55 in the 18-month experience of 1961–62. Since the Office of the Chairman and that of the secretariat were furnished without cost to the 1961–62 Conference, these items probably should be increased to $10,000 per annum in the present estimate.

Based upon these figures, together with the above estimate of the cost of full-time staff assistance, the total annual cost of the proposed Conference would be as follows:

Salary of the Chairman	$20,500
Full-time professional and clerical staff (10 persons)	101,000
Per diem compensation of part-time experts and consultants	80,000
Printing and duplicating	27,000
Travel expenses	18,000
Offices, utilities, supplies, and other expenses	10,000
Total estimated annual cost	256,500

Mr. LINDSAY. On the question of expenses on the Senate bill, I will turn hastily to page 9, I am reading from the Senate bill, line 10 of page 9—

but at rates for individuals not to exceed $100 per diem.

Does that cover just consultants and experts or also all the members of the assembly?

Judge PRETTYMAN. No; just consultants.

Mr. LINDSAY. Whereas it provides travel expenses of members from the outside, not Government.

Is that just a catchall coverage at the end where it says, on page 10, line 11:

There are hereby authorized to be appropriated such sums as may be necessary to accomplish the purposes of this act.

Judge PRETTYMAN. I thought there was a specific——

Mr. LINDSAY. I beg your pardon. On page 5 of the Senate bill, subsection (c):

Members of the Conference other than the Chairman shall receive no compensation for service, but members appointed from outside the Federal Government shall be allowed travel expenses, including per diem in lieu of subsistence.

I beg your pardon, it is provided.

Next, rather quickly here, on the question of conflict of interest, the Senate bill provides, as I read it, that non-Government members of the Conference shall be considered special Government employees.

There is objection to that from some quarters, as I understand it.

Would you agree that the Senate was right in including that "conflict of interest" provision in here? Or is that something you have not studied?

Judge PRETTYMAN. That is a pretty technical subject, as I understand it.

Mr. LINDSAY. Yes.

Judge PRETTYMAN. And, as I understand it, the Senate bill is correctly phrased.

Mr. LINDSAY. Right.

Judge PRETTYMAN. So that these people would not be deemed to be Government employees.

Mr. LINDSAY. That is right; "special Government employee" means a temporary, part-time person who only serves a limited number of days.

Finally, May I ask this question on the question of the scope of the Conference here: You would agree, I take it, with the scope of the Senate bill, rather than the narrower version that the Bureau of the Budget would prefer to see?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. For the reasons that you stated earlier?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. Why shouldn't we let the Conference go into the question of procedures of awarding contracts, and so forth?

Judge PRETTYMAN. Yes.

Mr. LINDSAY. Thank you very much, Judge.

Judge PRETTYMAN. I am sorry I took so long, Mr. Chairman.

Mr. WILLIS. That is all right. We caused you to, because we wanted the information which you possessed.

Mr. LIBONATI. Thank you, Justice.

Mr. LINDSAY. That is the quorum call, I guess.

I suppose, Mr. Chairman, the question arises now whether we go on with the hearing this afternoon.

I would like to say that the bill being debated on the floor of the House this afternoon is of special importance to me, and I will find it necessary to be on the floor in order to participate in that debate.

So if it is the will of the subcommittee——

Mr. LIBONATI. Are you with the bill or against the bill? We will keep you here if you are against the bill.

Mr. LINDSAY. I am keeping my own counsel.

Mr. LIBONATI. All right.

Mr. LINDSAY. But if it is the will of the chairman and committee to go forward with the hearing this afternoon, I would have no objection to it. I will have to read the record later on and make arrangements to have one of the minority members here in my place.

Mr. WILLIS. Well, of course, I do not want to discommode you if it is your desire that you would like to be here.

Mr. LIBONATI. I think this also is a very important bill.

Mr. WILLIS. Well, we have three more witnesses. We either will come this afternoon or return tomorrow morning.

(Discussion off the record.)

Mr. WILLIS. Will it be satisfactory——

Mr. LINDSAY. It will be satisfactory with me to go ahead either this afternoon or tomorrow.

Mr. WILLIS. We will resume at 2 o'clock this afternoon.

(Whereupon, at 12 noon the hearing was recessed, to reconvene at 2 p.m. of the same day.)

AFTERNOON SESSION

Mr. WILLIS. The subcommittee will please come to order.

We have with us Mr. Harold L. Russell of Atlanta, Ga., from the American Bar Association.

We are glad to have you, Mr. Russell.

STATEMENT OF HAROLD RUSSELL, ESQ., REPRESENTING THE AMERICAN BAR ASSOCIATION

Mr. RUSSELL. Thank you, Mr. Chairman.

Mr. WILLIS. We are glad to have your views on this very important piece of legislation.

Mr. RUSSELL. I appreciate the opportunity to be with you.

I have filed with Mr. Fuchs and the reporter a statement, and in view of the extensive discussion of the matter this morning, I think that I will just ask that the statement be included in the record and then I will go through it and highlight the points in the statement which seem to be pertinent in view of the questions and matters raised this morning.

Mr. WILLIS. That will be very satisfactory, and will be easier to follow.

Mr. RUSSELL. Thank you, sir.

Mr. WILLIS. The statement will be incorporated in the record at this point.

(The statement referred to follows:)

STATEMENT OF HAROLD L. RUSSELL, CHAIRMAN, SPECIAL COMMITTEE ON LEGAL SERVICES AND PROCEDURE, AMERICAN BAR ASSOCIATION

Mr. Chairman, gentleman of the committee, and members of the staff, it is a privilege to appear before you today, on behalf of the American Bar Association, to urge your favorable consideration of S. 1664 as passed by the Senate, the bill to provide for continuous improvement of the administrative procedure of Federal agencies by creating an Administrative Conference of the United States.

Preliminarily, I would like to introduce myself. My name is Harold L. Russell and I live and practice law in Atlanta, Ga. For some 12 years I have been active in sections and committees of the American Bar Association concerned with administrative law, practice, and procedure. I appear before you today as chairman of ABA's Special Committee on Legal Services and Procedure. The duty of our committee to our constituents and clients, the members of the American Bar Association, is to implement ABA's program of improvement and reform in the areas of administrative practice and procedure. A major part of that program is the enactment of legislation providing for an Administrative Conference of the United States.

Although it is hard to believe, the difficulties in securing declarations of policy by the house of delegates of the ABA are not dissimilar to those which attend enactment of legislation in the Congress of the United States. And it may be helpful, to reflect for the record the careful consideration given to this project over a period of many years by the bar, to review briefly ABA's consideration of it.

For many years, at least 15 now, there has been extensive discussion, among lawyers, administrators, judges, scholars, and others, of the possibilities of an administrative conference. The idea, I think, was originally that an administrative conference could do the same thing for administrative law practice and

procedure as the Judicial Conferences were expected to do, and did do, for the Federal court practice and procedure; namely, shorten hearings and records, cut out waste and needless delays, but, at the same time, promote fairplay and due process. After several years of discussion and the observation of the work of the first Administrative Conference called by a proclamation of President Eisenhower in 1953 and chaired by Judge Prettyman, the administrative law section of the ABA at the annual ABA meeting in 1959 presented a resolution which the ABA house of delegates adopted. It called for legislation to establish an administrative conference on a permanent basis. At that time, in the fall of 1959, the house of delegates instructed the special committee on legal services and procedure and the administrative law section jointly to draft legislation on the subject and present it to the house of delegates for approval. Pursuant to ABA rule the draft was required to be submitted to all sections and committees possibly interested in the subject matter to give them an opportunity to express their views and, if possible, to secure their concurrence in the proposal. It was a long, hard task but finally, in February 1963, we presented to the house of delegates at its midyear meeting in New Orleans a draft which was approved by the house almost unanimously. It was a milestone occasion; never before in ABA history had there been such a widespread acceptance of a major proposal in the field of administrative law. The house of delegates instructed the special committee on legal services and procedure, the administrative law section, the mineral and natural resources law section, and the public utility law section to work together to seek the enactment of the legislation presented to the House or legislation equivalent in purpose and effect.

Immediately thereafter, we formed a working group and we went to work. We conferred with Judge Prettyman's group, the Council of the 1961–62 Administrative Conference appointed by President Kennedy. Later we conferred with personnel of the Bureau of the Budget who had under consideration a draft of a bill to establish an Administrative Conference. We also conferred, at a tripartite meeting, with the members of the Council of the 1961–62 Conference and personnel of the Bureau of the Budget. We sought an accommodation of views hopefully to arrive at a draft which could be wholeheartedly supported by all interested parties. We submitted many suggestions to the Bureau of the Budget, some of which were accepted. We rewrote our own ABA bill again and again in an attempt to make it acceptable to the Bureau of the Budget while, at the same time, adhering to our duty to seek legislation equivalent in purpose and effect to that which had been approved by the ABA house of delegates. When it became apparent that no one was going to be entirely satisfied with any of the drafts, Senator Edward V. Long introduced S. 1664, which was a draft prepared by the Bureau of the Budget.

ABA representatives attended the 3-day hearing before the Senate subcommittee, June 12–14, 1963. On the last day of the hearings, we presented three witnesses. We offered our draft as a substitute measure and it appears at pages 124–128 of the printed record of the hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary. We urged many amendments to S. 1664 as it was introduced; and some of our suggested amendments were accepted by the Senate committee and by the Senate and many of them were rejected. However, despite the fact that S. 1664 as it comes to you from the Senate does not incorporate all the changes which we think desirable, we nevertheless consider it a good bill and we urge its prompt enactment.

I appreciate that this résumé of ABA activity in this area may sound somewhat tedious, but the fact is that the measure has received tedious attention from perhaps overly tedious lawyers for several years. It has been exhaustively considered far and wide. My file contains more than 30 drafts of the legislation.

With that background, I will summarize the reasons why the agencies themselves, the executive branch of our Government, the judiciary, the bar, and those of the public who know about it (and there have been some editorials, all favorable) are urging the passage of legislation for the establishment of an Administrative Conference. It is because the Administrative Conference will:

1. Enable the agencies, in cooperation with representatives of the public and in cooperation with other Government personnel, to undertake, in a spirit of mutual helpfulness, critical self-examination of their practices and procedures and thereby provide for solutions for their common problems, the benefits of expedition in action, the reduction of expense in processing their work of both

a formal and informal nature and the preservation and enhancement of fair-play and due process;

2. Provide a "wailing wall," or "escape valve," if you will, for the receipt and consideration of public complaints with respect to the handling of matters by agencies so as to benefit the governmental process through the certain creation of better public acceptance of the agencies and their work; and

3. Through the office of the Chairman, a person of stature appointed by the President with the consent of the Senate and commanding the respect of the public and the agencies alike, afford constant and continuing inquiry into the agency process and assure the means for its improvement and, when solutions and improvements are formulated, provide a person responsible for seeing that they are carried out, to the extent feasible, by the agencies.

I have not heard how much the Government and the public might be saved by the effective work of the Conference and its Chairman. But, a minimum saving can be readily estimated. If there are only 10,000 firms in this country which have the equivalent of only one full-time man devoted to the filing of reports with the Federal agencies, or preparing facts and pleadings and other documents in connection with formal and informal proceedings before those agencies, or devoted to coming to Washington or going to New Orleans or elsewhere for hearings or other business before the agencies, then annually the regulated industries spend 20 million man-hours in their relations with the Federal agencies. That is a number which is certainly smaller than the amount which is actually spent. More than 10,000 firms file reports in Washington and elsewhere with the Interstate Commerce Commission, the Federal Communications Commission, the Federal Power Commission, the Federal Trade Commission, the Federal Maritime Commission, the Civil Aeronautics Board, the National Labor Relations Board, the various agencies of the Department of Health, Education, and Welfare, and the more than 50 other Federal agencies. And thousands of firms have more than the equivalent of one man devoted to fulfilling the requirements of the agencies and to handling their business with the agencies; some have hundreds and a few have tens of hundreds. But, taking the 20 million annual man-hours as a bottom estimate, and applying to it a cost figure of $25 per hour, which is not unreasonable when it is remembered that each worker must be provided work facilities, space and equipment, secretarial and other such assistance and that a great number of them incur travel or other such expenses, a total cost to the regulated industries of $500 million is indicated.

If I were Chairman of the Administrative Conference, and I hasten to add that I would have no such ambition because it will be a burdensome and thankless job. I would set as a primary goal for the first year of operation of the Conference a 10 percent reduction in the number of man-hours devoted to fulfilling the requirements imposed upon industry by the regulatory agencies and their practices and procedures; and for the second year I would have a goal of an additional 10-percent saving. In short, I believe that an effective Conference, under an able Chairman, can save regulated industries a minimum of $100 million annually by the second or third year of operation.

There will also, in my opinion, be comparable savings to the agencies themselves. Every person in private industry preparing reports for, or assembling data for formal or informal agency proceedings, has almost a full-time counterpart in the administrative agencies. But if only 50 percent of the savings which I have estimated for regulated industry could be achieved by the agencies, there should be savings of at least $50 million per year within a short time after the Conference begins operation.

At the hearings before the Senate committee, the witness for the Bureau of the Budget estimated the cost of the Conference to be in the neighborhood of $250,000 per year and certainly considerably less than $500,000. It seems to me that estimate is reasonable and that the Conference, including the office of the Chairman, could operate effectively with a budget in the neighborhood of $250,000. In any event, the cost of the Conference will be a pittance in comparison with the actual savings which can be achieved.

And, in weighing the cost of any Conference, you will not overlook, I am sure, the intangible, but important benefits, which will result from the promotion of fairplay and due process in practice and procedure. That will be an important work of the Conference which will lead to the restoration or rehabilitation of public confidence in agencies and agency processes. Those benefits alone will be worth many many times the cost of the Conference. Moreover,

delay in administrative proceedings and decisions can be, and has been alleged to be, a construction upon the development of the Nation's economy which can cut the gross national product by hundreds of millions.

You will have available to you, of course, the record of the extensive hearings before the Senate committee and the documents on this subject prepared and printed in the Senate. I am sure your diligent counsel, Mr. Fuchs, has studied them carefully and will bring to your attention materials therefrom which bear upon the particular aspects of this matter in which you may be interested. Therefore, I will refrain from imposing upon your time to bring to you matters which are well covered there. There are, however, two additional thoughts which are not particularly highlighted in the Senate hearings and which I think it wise to lay before you here.

Legislation is needed to establish the Conference and make it effective. It cannot be done effectively by exercising Presidential power under a reorganization act, since there would be no authority to bring in public representatives, the outside of Government people, who are necessary to make the Conference effective. Legislation is also necessary to establish the office of the Chairman and to make that office effective; and all now agree that the Chairman's job must be such as that prescribed in S. 1664 in order to make the Conference a success. Money will be needed to maintain the operations of the Conference and to employ a small staff. It will be appropriate for the Conference to come to you, the Congress, annually to request an appropriation and give an accounting of its work; the alternative, a siphoning of funds appropriated to the executive departments and agencies for other purposes to the Conference would result in Congress having no opportunity for periodic review of the activities of the Conference. There are also very practical reasons for legislation. If one is to expect good performance from the Conference, its duties, its organization, its meetings, its continuity and the necessary followup on its work to see whether the recommendations are implemented by the agencies—all of these things cannot be left to the whim of the agencies or the executive departments. The statute is necessary to define the duties and to provide the prod for their performance. Finally, I think this is too important a matter to be left to an Executive order of the President, although I would be the first to admit that the two previous conferences established by President Eisenhower and by President Kennedy were most successful. The point is that Congress has a vital interest in the performance of the agencies and it is only appropriate that Congress should provide, by statute, for the Conference on a continuing basis with the opportunity which that will afford for annual review of the work of the Conference in connection with appropriations.

Finally, I want to leave with you the thought that the time is ripe for passage of this legislation. The Congress has passed no measure designed to attack, on an overall basis, the problems of administrative practice and procedure since the passage of the Administrative Procedure Act in 1946. The bar and, I believe, the public are anxious to see the problems of administrative practice and procedure receive the same kind of attention as the problems of court practice and procedure receive in the Judicial Conferences. I think it appropriate to note that the Judicial Conferences are established by statute (28 U.S.C. 331, 333). There is no governmental body today having responsibility for continuous attention to administrative practice and procedure; there is no continuity in the sporadic reviews of the subject; and there is no responsibility placed anywhere for effecting economies or improvements among all agencies in their practices and procedures. The need is critical. Every day of delay costs the Government and the regulated businesses of this country alike tens of thousands of dollars.

I will conclude now knowing that Mr. Seidman of the Bureau of the Budget is to follow me with some suggestions to which I probably would like to respond. With the committee's indulgence, I will remain here, hoping that there might be time for some brief comments on what Mr. Seidman may have to say.

Mr. RUSSELL. At the outset, let me say it is a privilege to be with you on behalf of the American Bar Association to urge your favorable consideration of S. 1664 as passed by the Senate.

I was deeply gratified this morning to learn that Judge Prettyman and his Council of the 1961–62 Conference appointed by President Kennedy, believe that S. 1664 as it is presented to you now, is a good bill.

Preliminarily, I would introduce myself. I am Harold Russell of Atlanta, where I live and practice law.

Mr. WILLIS. I understand you and Dick do not get along.

Mr. RUSSELL. When he behaves himself we do. Of course, we in Georgia think he behaves himself more than 99 percent of the time.

Just because somebody else on your committee might read this record, Mr. Chairman, I think I ought to also note I was born in Abingdon, Washington County, Va., which is almost in the 5th District of Virginia—right next door to Governor Tuck—where my family still lives, and I was raised there.

Mr. WILLIS. Did they vote for him?

Mr. RUSSELL. I will tell you, after the Supreme Court gets through with these congressional districts, he just might be our Congressman. We certainly would be for him.

Mr. WILLIS. In his absence, I want to protect his interests.

Mr. RUSSELL. I see. Then because Mr. Lindsay might look at this, I did go to Columbia Law School and lived in the 17th District of New York when I was up there, and also practiced law in New York for a year.

Mr. WILLIS. That is the Republican side, but that is all right.

Mr. RUSSELL. I am a lobbyist in this situation, Mr. Chairman, for the American Bar Association, as chairman of the committee on legal services and procedures, and we are looking for all the friends we can find.

Our duty in our special committee is to promote the bar association's program in the field of administrative practices and procedures and a major part of that duty is this matter of legislation for the Administrative Conference.

Not only have Judge Prettyman and his friends and associates been worried for some 15 years with the matter of the establishment of an administrative conference, but also has the American Bar Association.

About 4 years ago, my special committee and the administrative law section were instructed to draft legislation and present it to the house of delegates for approval, and we were not able to get that done, Mr. Chairman, and we were not able to get that done, Mr. Chairman, until February 1963, at the house of delegates' meeting in New Orleans. I guess you would say being in that place was conducive or helpful to progress, but anyway we got it done there.

Then we got together with Judge Prettyman's group and the Bureau of Budget people and we had two-way and three-way meetings, and, finally, we got a draft in which we tried to accommodate our views to their views.

Now, in the meantime, not without cause I think, on May 1 of last year, Senator Ed Long, of Missouri, who was interested in this project, decided that if he were going to move it, he would have to introduce a bill because it did not look like we could get together with Judge Prettyman's group and the Bureau of the Budget's group; so he did, and that was S. 1664 as it was originally introduced. And it is the same as H.R. 7200, which Congressman Harris talked to you about today.

Now, there were extensive hearings in the Senate. We attended all the sessions and we offered three witnesses. We offered a substitute measure in the course of our testimony in the Senate, and that substi-

tute measure, which is the best that we could come up with, is H.R. 7201, about which Mr. Harris talked to you this morning.

Now, we also urged amendments to S. 1664 as it was introduced and some of them were accepted by the Senate and some of them were rejected. But we do believe, nevertheless, that as S. 1664 comes to you from the Senate, and even though it does not incorporate everything that is desirable, we nevertheless consider it a good bill and we are happy to agree with Judge Prettyman and his Council in that respect, and we urge that it be enacted.

Now, without knowing it, I think Mr. Harris this morning was helping us in one major particular that I would like to comment on right now.

The H.R. 7200, which is the original 1664, actually provided for less authority in the Chairman of this Conference than we have advocated.

Actually we, in the American Bar Association, have advocated a stronger chairman with more authority and more power than was advocated by the Budget people.

Now, the Senate made three amendments in the powers of the Chairman in S. 1664, which make it clear that he has the right to report individually when he thinks it is necessary, and which make it clear that he has the power to make——

Mr. WILLIS. Report to whom, Congress?

Mr. RUSSELL. To the Congress and to the President. Yes, sir. Which make it clear that he has the power to make inquiries into matters which he thinks should be examined and not just preliminary inquiries. Those two things, we think, make S. 1664 in that respect all right as amended. But I want you to know that we stand with Congressman Harris for stronger powers in the director, and that S. 1664, as amended, in our view, is satisfactory.

Now, this matter of the promotion of the establishment of an administrative conference, has been delegated to one committee and three sections of the association.

That was by the action in New Orleans, and I want you to know that we had more nearly unanimous approval of this measure by the house of delegates of the American Bar Association than we have ever had before of any project in the administrative law field.

The special committee, that is my committee, the administrative law section, the mineral and natural law section, and the public utility law section, were all instructed to work together to further this legislation.

And at this point, I would like for you to know that some other representatives of the association are here.

We had here this morning representing the section on public utility law, Mr. Willard Gatchell, who was formerly chairman of that section's committee on administrative law and was for a number of years General Counsel of the Federal Power Commission.

He practices law in Washington now, but he was here and he wanted you to know he was here, and he is very much interested in this.

We have also Mr. James Pinkney, general counsel of the American Trucking Associations, a member of the council of the public utility law section for many years, who is here today.

We have Mr. Ashley Sellers, a prominent Washington lawyer, and member of the house of delegates of the American Bar Association: onetime chairman of this special committee which I have the honor to head now, and more than once chairman, I believe, of the administrative law section of the American Bar Association.

We have Mr. C. Roger Nelson, of Washington, chairman of the administrative law section of the American Bar Association. Mr. Nelson is of the Washington firm of Purcell & Nelson.

I think we have Mr. Charles D. Ablard, of Washington, general counsel of the National Magazine Publishers' Association, a prominent Washington lawyer active in this field.

And then last but not least, I am delighted to have here with me quite unexpectedly my senior partner from Atlanta, Mr. E. Smythe Gambrell, a past president of the American Bar Association.

And with your permission, I would like to ask Mr. Nelson and Mr. Sellers to come up here in case you or Mr. Fuchs or somebody else gets into some questions on which they might like to speak or to which I might be in over my head.

Mr. WILLIS. If you would like to have them. Come up, gentlemen.

Mr. RUSSELL. Mr. Kastenmeier raised a question with respect to this, this morning: Are the agencies themselves for this kind of legislation? They strongly supported it by communications and by testimony before the Senate committee: in the executive branch of the Government and the judiciary, the bar, and those of the public who know about it—and even though this is not the kind of thing that makes editorials, there have been several editorials I have seen on it, and all favorable.

The reason all of these people are urging passage of legislation for an administrative conference is because, one, this conference will enable the agencies to get together with outside helpful people, with other people from the Government—and, incidentally, you were talking about who might be outside, this morning, technically even someone like Judge Prettyman would be outside because he is not an agency member. But I can think of no one more indispensable for the operation of a successful conference than Judge Prettyman.

They can get together and solve their problems with respect to practice and procedure, provide for expedition and action, and reduction of expense in their work, in both formal and informal cases, and at the same time they can promote fair play and due process.

One thing that has not been mentioned which is important is that the conference will provide a "wailing wall" or escape valve for people who think they have been mistreated by agency action or inaction, and it will help, if you please, the public image of the agencies.

And finally, this fellow who will be the chairman, he will be appointed by the President with the advice and consent of the Senate, he will command the respect of the public and agencies alike.

His office will mean that there will be a constant and a continuing inquiry into the agency process that will assure the means for its improvement. Also his office will insure action when these conferences come to conclusions; he will be the fellow who will be responsible for pushing them into performance and pursuant to the recommendations.

There have been two good conferences, but I would say that of the recommendations made, less than 10 percent have been implemented by the agencies. So we need this Chairman to push them along.

Mr. WILLIS. You mean 10 percent of the recommendations of the conference?

Mr. RUSSELL. Of the last two conferences, Mr. Chairman. The one in 1953–54 and the one of 1961–62. I would say, looking across the board, if there are 100 opportunities for implementation, less than 10 of them have been made.

Mr. WILLIS. Were those recommended with a pretty strong vote?

Mr. RUSSELL. Yes, they were, Mr. Willis.

Mr. WILLIS. Why have less than 10 percent been put into effect? What magical formula can an act of Congress provide?

Mr. RUSSELL. You will provide a chairman whose duty it will be to encourage the people to put them into effect and to report to you on the extent to which they might or might not have put them into effect—report to the Congress, that is.

We feel that will be the spur needed.

Mr. WILLIS. Frankly, I was impressed this morning with Judge Prettyman's statement, which he did not intend to portray that way, to the effect that the troubles about the slowness of the bureaucracy we were talking about involves such things as not preparing your pleadings well, not knowing your case well, not paying attention to the rules, and so on; and that in no instance did he take to task the redtape of the bureaucrat.

It looked as though he was loading it against the practitioners rather than criticizing what was going on within the agencies. Talking about the image that you said you would hope to improve, what can a man from Louisiana do who wants a radio station and has to go through this maze of necessary proceeding here, or a man who wants a TV station and has to hire a Washington lawyer, and it takes months and years?

Or even the cases that come to my office, a man who wants a quick hookup on an "intercom" between his trucks on the highways and his office, and he wants a band, for radio service; that takes months and months and months?

Speaking of timing, I handle umpteen of them and they always come. They have never turned one down. But why in the devil does it take so long? Why can't they say, "Yes"? Why can't somebody say "yes" or "no" right now?

Is there hope for that man? Because that is the one I am interested in.

Mr. RUSSELL. I think there is genuine hope in this area. I think one reason why you have those unnecessary delays is because the agencies who do similar work, that is the FCC or many others do similar work in issuing licenses of various kinds, with and without hearings, they never get together to consider how they do it, how each other does it or the others do it, and they never compare notes on whether they are doing a good job in comparison with someone else. They never have anyone looking over their shoulder to see whether they are really doing it as expeditiously as they ought to.

If you get them all in the room and get them to compare notes, I believe you will find some agency in the Government doing the same

work in 24 hours that it takes another agency in the Government 6 months to do.

If you get them together, working together, exchanging ideas as to how you can expedite these things, I think from that alone you would secure substantial improvement.

If you have this conference with this chairman drawing out from the agencies, on a regular basis, their performance in terms of how long they take to decide these cases or how long they delay the issuance of these permits, and bringing that type of information to you, and holding these people up to—well, to publicity when they are not doing it as expeditiously as they should, I think you are going to have a helpful thing.

There are also, I suggest, some ways the Conference can be of help to you, Mr. Chairman. I believe if you get this Conference and get this chairman, and if he is the kind of fellow who does the job like it should be done, a whole lot of these people—and I know you love them and I know you want to help them because they are your own constituents, but a whole lot of these people who come to you for relief on these types of things, you can appropriately send them to the chairman of the Administrative Conference and say, "It is that fellow's job over there to try to get things moving along," and it will take a lot of the burden off of you that you have had in that area.

Now, I tried to figure out, and I have it in my direct testimony, just how much a Conference like this might save, and I cannot possibly tell, but I could come to some minimum estimates.

I know that there are at least 10,000 companies, firms, businesses in this country which must have at least an equivalent of one man working full time on its relationships with the Federal regulatory agencies, making and filing reports and all kinds of forms, preparing evidence and pleadings for formal and informal cases of all kinds, coming to Washington or coming to New Orleans for a hearing or otherwise doing business with these agencies.

Now, if that is true, and I think that is a minimum estimate, then there are at least 20 million man-hours a year spent by private industry in its relationships with administrative agencies.

Judge Prettyman said there are 108 of them; I am sure that I could not begin to name them all but there must be at least that. And everyone of them requires a mountain of paperwork.

Now, if we figure that there are only 20 million man-hours a year on this and you figure the cost of housing a man, providing him with office space, with secretarial service, and his travel expenses when he has to go to a hearing, and the preparation of his printing, and so forth, and the stuff he has to file with these boards and agencies; and, if you figure it only at $25 an hour, you have got a total cost of the regulated industries of $500 million for the relationships with the Government agencies.

That $500 million in my mind is a minimum figure.

Now, I think that a reasonable goal for an Administrative Conference ought to be in the first year of its operation to cut down on delays, to find better procedures, to find ways of expediting things to the extent that they could, at least, in the first year, cut that down by 10 percent and in the second year by another 10 percent. Now, I believe

sincerely that within 2 years after this gets in operation, that it can save the regulated industries at least $100 million a year.

And there is a counterpart saving in the agencies themselves; for every fellow who is in industry making up these reports and processing these papers for hearings, or even informal proceedings, you almost have one in the agencies themselves.

Mr. WILLIS. Frankly, I have not digested these bills, but do not be surprised if, after I do, I will find language to put the heat on the Conference itself so that it is not just one more superagency.

Mr. RUSSELL. Right.

I think maybe when you look at S. 1664, you will find something you want.

Mr. WILLIS. I have never seen a bill that had such generalities since I have been in Congress.

Mr. LIBONATI. It is very broad.

Mr. WILLIS. If I can find language to put heat on the Conference, I sure will do it.

In line with what we are talking about, if the Conference cannot be fired up with a firecracker, how are you going to put firecrackers underneath the agencies?

Mr. LIBONATI. Mr. Chairman, along that line of thinking, in view of the differences between Mr. Harris' bill, which is more restrictive in its language and definitions, and this bill, the Senate bill, which is broad in its interpretation of deprivations relative to an agency's powers, don't you find that you might get into the substantive programs of the agencies, and thus take upon yourself a jurisdiction you did not intend to take in view of the fact that these agencies had representatives in this so-called setup that have determined?

I will read that for you, on the question of the definition of administrative procedure; it means:

> Procedure used in carrying out an administrative program and shall be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review; but shall not be construed to include the scope of the agency's responsibilities established by law or management's substantive policy committed by law in the agency's discretion.

Now, in full compliance with the definite purpose of this provision, certainly you cannot, with one declaratory statement which is in a broad sense acceptable of an operation of an agency and at every one of its levels, say later on, "But we are not going to interfere with their delegated powers."

It is important that whatever we have in the legislative sense delegated to the agency as an operational program—not the delegation of legislative power—then it must be respected.

Mr. WILLIS. Well, that is assumed to be the case.

Mr. LIBONATI. Yes, and so with this other all-inclusive statement in its broadness, you would actually be giving yourself the proprietary right to move in on them on any of their decisions, any of their procedures, and so forth.

Am I correct on that?

Mr. RUSSELL. I do not believe——

Mr. LIBONATI. I mean this discussion is in the nature of a suggestion. But in the type of organization you are setting up, it would be almost

mandatory to be carried out, because you have a regular U.N. set-up here in this bill without limitation of power to review, etc., on membership, and so forth. And under this bill you can take in as many as you want that will favor your position and put the pressure on the Congress to curtail or to expand the so-called operation and management of an agency and all matters that you include here in this definitive interpretation of your jurisdiction, and go into every area of their purposes.

Certainly you will admit that being able to review their decisions is far beyond any conception of our acceptance of giving you this opportunity and responsibility and power?

Mr. RUSSELL. That is right.

Mr. LIBONATI. Am I correct in what I am saying?

Mr. RUSSELL. Yes, you are, sir. But I believe that the last three lines of section 3(c), which you read, would say—

but shall not be construed to include the scope of agency responsibility, or matters of substantive policy committed by law to agency discretion.

Mr. LIBONATI. But that is separative. You first take upon yourself the broad power. Then you say that it must not interfere with this and this; but giving you those broad powers you can later defend your position in interfering in that field if it is sensitive to the purposes that you feel that you have the approval to do.

Mr. RUSSELL. I think you will find that it is going too far. You put your finger on one other thing when you said "purposes for which you are organized." They are set out in section 5 of S. 1664.

If the Conference acts in accordance with those purposes—which, Mr. Willis, are also their duties—they will not get into the matter of reviewing substances of the proceedings, but only the procedural aspects.

Mr. LIBONATI. So what you are creating here by your definition is a block between the legislative powers of the Congress and the powers of the various agencies that are creatures of the law passed for their operative purposes and responsibilities.

Mr. RUSSELL. I appreciate what you are saying. And also let me point to the first line of subsection (c) of section 3, which says: "Administrative procedure" means procedure, and that is what we are talking about; we are not talking about matters of substance.

Mr. LIBONATI. Is that the reason why you do not want to put a limitation upon your membership?

Mr. RUSSELL. Membership? Now, I wanted to come to this because you raised that this morning.

Mr. LIBONATI. That is very important.

Mr. RUSSELL. You also raised the matter of expense. Expense will be only a pittance in comparison with the savings to the Government and public.

We started out with a limitation on the number of people, 85 or 90 members, and before we got through, we had been talked out of it.

It is not to us any matter of great concern so long as there is a full and fair representation of people outside the Government.

If you were going to put a ceiling on it, I do not know what the ceiling would be, but it ought to be high enough so that there would

be no restriction against the appointment of sufficient people outside the Government for outside-the-Government people to be fairly represented.

Judge Prettyman's conference had less than 100. He always says he had 80-some-odd, but incidentally he forgets that he had 3 Members from the House and 3 Members from the Senate.

So actually with alternates, he actually had 94.

We suggested, incidentally, in our bill, which is H.R. 7201, that there be three from the House and three from the Senate, and that the Chief Justice of the Supreme Court be invited to name three members.

But that has been lost, too. That is one of the things we are not taking issue about today. We think it would be better with such a provision, but we did not win it in the Senate and we will compromise on S. 1664.

Now, let me add two more thoughts, Mr. Chairman. The first is—I do not think this has been sufficiently emphasized—that legislation is needed for an effective conference. It cannot be done, in our opinion, by exercise of Presidential power, Executive order, under a reorganization act, since, as I understand it, there is no authority in that situation to bring in public representatives, the outside-of-Government people who are necessary to make the Conference a success.

Legislation is also necessary to give the office of the Chairman the stature that it should have and give him the powers which he must have to prod the agencies and the Conference alike to make it a success.

Now, we come to something which I think is important. Legislation is needed—and I think Mr. Libonati raised this too, legislation is needed because, in our opinion, this Conference ought to have a budget which is provided for by the Congress itself.

There ought not to be a siphoning of funds from the administrative agencies into this Conference in a way that you never know about.

This Conference ought to get its money from you. It ought to come to you each year with a report of what it has done and what it expects to do, so you can see whether it performed in the way you think it ought to perform.

And if they have not, I would say don't give them any more money, or give them a whole lot less.

But that is the practical reason I think, one of them, for legislation, so that you can keep control of it in a way.

I think it is too important a matter to have the President running off by Executive order and establishing a conference without regard to the Congress.

The Congress, after all, I know you gentlemen often say—and some of us as lawyers agree with this and some of us do not—but, anyway, you often say that the agencies are the arms of the Congress, or an arm of the Congress. And if that is so, and I think to some extent it certainly is, it ought to be done by legislation and not by an Executive order.

Mr. WILLIS. Is there a provision in the bill compelling the Conference to have periodic meetings?

Mr. RUSSELL. Yes, sir; it is in S. 1664 as amended, Mr. Willis. That was one of our suggestions, that it be amended to require meetings at least annually, and it is in the bill as amended.

Now, I think that I have about covered everything that I might cover, effectively or not, in the statement.

I do sincerely urge your prompt and favorable consideration of S. 1664.

It has been since 1946, that this Congress passed any measure of overall general applicability to administrative practice and procedure.

It has been almost 20 years since we have had a real step forward in this area. Apparently there is almost unanimous opinion that this will be a real step forward. And every day that the effective operation of this Conference is delayed costs the public, it costs the agencies, and the taxpayers tens of thousands of dollars. That is the reason we say we hope you pass it out as quickly as you can.

I understand Mr. Seidman is to testify later, and Mr. Nelson and Mr. Sellers and I will be around if you would like to ask us any questions now or after his testimony.

Mr. CAHILL. The bill as presently written would appear to establish a permanent commission without any termination date. Is it your thought that this is desirable? Or do you feel that in enacting such legislation, a cutoff date should be established?

Mr. RUSSELL. Mr. Cahill, as a lawyer, you know that the Judicial Conferences of the United States are similar established. We see no reason why this should be different. But we do urge that it be established by legislation and that the Conference have to come back to the Congress each year for its appropriation, so that you can determine then whether it is worthwhile.

Mr. CAHILL. In other words, you feel that the control of the purse strings would, in effect, control the duration of the Conference?

Mr. RUSSELL. Yes, sir. As to that, of course, the criterion of success of the Conference would be the merits of the particular projects which it pursues. Under either bill that you have before you, there is a considerable latitude for the Conference itself to determine what the subject matters will be it will emphasize or give particular attention to.

Now, naturally some of those projects could well be quite time-consuming, quite costly. Others, not so much so. And as the Conference proceeds, it would be expected that they would be acquainting the Congress each year with what sort of projects they have underway, just as is true in any appropriations committee, reviewing conduct of a government.

To the extent that those projects do not address themselves or do not sell themselves, so to speak, to the Congress who is reviewing those programs, why naturally those appropriations would suffer and should suffer.

Mr. CAHILL. Right. Thank you.

Mr. WILLIS. I think that is all the questions we have.

Mr. RUSSELL. Thank you, Mr. Willis. I have just one more thing.

Mr. Max D. Paglin, who is General Counsel of the Federal Communications Commission, is a member of Judge Prettyman's Conference. He was here this morning and he may be here this afternoon—yes, he is. He has done a very informative and enlightening article

on this subject, which appeared in the Public Utilities Fortnightly.

I have several copies of it I would like to give to your counsel, Mr. Fuchs, for your examination.

I think it is worthy of inclusion in the records of the hearings.

(The article referred to is as follows:)

[Public Utilities Fortnightly, Washington, D.C., Dec. 5, 1963]

PROGRESS TOWARD PROCEDURAL REFORM

LEGISLATIVE DEVELOPMENTS LOOKING TO AN ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

(By Max D. Paglin [1])

Action taken by the Senate on October 30, 1963, in passing S. 1664, creating an Administrative Conference of the United States, marks a significant step toward realization of a long-sought goal in the field of administrative procedure. If this bill becomes law, we would be at the threshold of a new era in public administra- bill becomes law, we would be at the threshold of a new era in public administration.

A little more than 2 years ago, in its September 14, 1961, issue, the Public Utilities Fortnightly reprinted an address of the Honorable E. Barrett Prettyman, senior circuit judge, U.S. Conrt of Appeals for the District of Columbia Circuit, on "The Administrative Conference of the United States," delivered before the public ntility law section of the American Bar Association at St. Louis, in August of 1961. At that time, the Administrative Conference of the United States was still in its infancy. Established by President Kennedy pursuant to Executive Order 10934 (Apr. 13, 1961), under the chairmanship of Judge Prettyman, the Conference—which for convenience will be referred to here as the "interim" conference to distinguish it from the permanent Conference now being considered—was directed to report to President Kennedy by the end of 1962, * * * summarizing its activities, evaluating the need for further studies of administrative procedures, and suggesting appropriate means to be employed for this purpose in the future."

Since the Fortnightly's last article on this subject, important steps have been taken to assure that efforts toward procedural reform will be continued. Notable among those was the issuance by the interim conference of its final report to the President on December 15, 1962.[2] In that final report, the Conference made some 30 recommendations to the various agencies of the Government and recommended establishment of an Administrative Conference of the United States on a permanent basis. Equally important—and, in fact, indispensible in carrying out the recommendation calling for a permanent Conference—are the five bills subsequently introduced in the Congress [3] which propose, in some form or another, to set up such a Conference.

The purpose of this article is to bring Fortnightly readers up to date on the more important developments respecting the interim Conference—what is accomplished, what can be learned from its work, and what prophecies can safely be made regarding any future Conference. Additionally, this article will discuss briefly these various legislative proposals, and particularly the composite bill which has just been passed by the Senate.

The necessity of having some permanent body, whose functions would include a continuing appraisal of the vexing problems of procedure plaguing both Government agencies and private practitioners, is not a new concept. The detailed

---

[1] The views expressed in this article are those of the author, who is General Counsel of the Federal Communications Commission, and are not to be attributed as the views of his agency. Mr. Paglin was appointed by President Kennedy as a member of the Council of the Administrative Conference of the United States, and later elected as Vice Chairman of the Conference. Mr. Paglin wishes to acknowledge gratefully the assistance of Hilburt Slosberg, Associate General Counsel, and Edward W. Hautenan, senior attorney, Legislation Division, Office of the General Counsel, FCC, in the preparation of this article.

[2] Reprinted in Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, "Selected Reports on the Administrative Conference of the United States," S. Doc. 24, 88th Cong., 1st sess. (1963).

[3] S. 1664, introduced by Senator Edward V. Long of Missouri, chairman of the Senate Subcommittee on Administrative Practice and Procedure, and H.R. 7200, H.R. 7201, and H.R. 7203, introduced by Representative Oren Harris of Arkansas, chairman of the House Committee on Interstate and Foreign Commerce.

history of the various groups which were appointed to study the problems in this area (including the study of both the feasibility of establishing some kind of continuing organization, as well as of specific administrative problems facing the agencies) has been fully discussed by Judge Prettyman in the article referred to above. That history will not be repeated here.

Suffice it to say that the idea behind establishment of some kind of conference seems to have taken root late in the forties. For over a decade, that idea was nurtured, refined, and built upon through the work of a number of different professional and judicial groups which addressed themselves to this subject matter, including the President's Conference on Administrative Procedure which was convened by President Eisenhower in 1953. It was given further stimulus in the action of President Kennedy in 1961 which established the interim Conference under Executive Order 10934. And over the years, there has emerged from the studies and recommendations of all these groups, a fairly clear picture of the basic attributes of an Administrative Conference of the United States.

Initially, and vital to the successful approach of any study group to the problem of administrative procedural reform, the organization must possess the characteristics both of permanency and continuing activity. As past experience with previous Conferences has indisputably shown, spasmodic efforts, important though their results may be, have proven inadequate to the larger task of providing the continuing appraisal of procedural problems which is necessary to a viable administrative process. Continuity of effort, stimulated and administered on a day-to-day basis by a permanent secretariat, appears to be the only approach which offers a reasonable hope of success. The maintenance of an effective and democratic administrative process requires a constancy of review and evaluation capable of addressing itself not only to present ills, but also to the prevention of future ones. And it goes without saying that the projection of long-range studies, though they may involve the temporary and intermittent efforts of many, must be founded upon the permanency of an organization devoting its full time and attention to these tasks.

VARIED REPRESENTATION

Further, the Conference must be empowered to procure relevant information from Government agencies and to make recommendations to the agencies and reports to the branches of the Government concerned with procedures—the Congress, the President, and the courts. Full and complete data determined by the Conference to be pertinent to its study and analysis of broad procedural problems must be the cornerstone of its proposals, if they are to warrant respect and attention.

Finally, no matter how responsibilities may be divided among the constituent parts of the Conference, the membership of the Conference must include not only representatives of the Government, but persons from groups outside the Government as well; i.e., members of the bar, legal scholars, and persons knowledgeable by reason of their work and experience, in the fields of administrative procedure and Government. Only from such diversity of background, experience, and perspective can we bring to bear the varied insights into our administrative process which can produce helpful recommendations sensitive to the needs of all.

As reflected in the legislation recently introduced on this subject, there seems to be a fairly general agreement that all of these elements are indispensable to any Administrative Conference. However, within these areas of agreement, specific questions give rise to differences of view. For example, the role which the Chairman of the Conference should play, the structural organization of the Conference, the balance to be struck between Government and non-Government representation, the agencies to which any legislation on this subject should apply—differences regarding these and other elements are all reflected in the various bills.

Of course, the basic attributes mentioned above, vital as they are to the framework of the Conference, represent only minimum requirements. Beyond this, the raison d'etre of the administrative process itself points to other considerations which should be taken into account in completing the design of an effective conference. The search for constant improvement in public administration and administrative procedures should not, and must not, range administrators on one side and a hostile bar or public on the other. What must be recognized is that the needs to be served by proper procedures are not antagonistic. For, on reflection, it becomes apparent that two great and basic objectives are ultimately served by the administrative process.

The first of these is to insure that the business of the Government will be carried ont efficiently, effectively, economically, and fairly. Government business ranges over a wide area, embracing as it does the attainment of all those goals which legally have been declared to be in the public interest—the allocation of radio frequencies, the regulation of interstate communications and transportation, the building of power dams, preventing the use of the mails for fraudulent purposes, insuring "truth in securities" and the purity of food and drugs, etc., to name but a few. The importance of carrying out these aims of Government is self-evident, even though the relation of administrative procedure to these ends may not, at first blush, be equally clear. But, on analysis, one can see that the real purpose of procedure, as it relates to the attainment of objectives, is to set the ground rules for the method by which these objectives will be carried out.

TWO PUBLIC NEEDS

The second great need served by administrative procedures is a more personal one, involving as it does the rights of individuals who do business with the Government or are subject to its procedures. Here, what is required is that those whose personal or economic well-being is affected by governmental activities should be protected against arbitrary, unjust, or uninformed exercises of official power. In short, the ground rules which are devised must conform to statutory limitations, and must be fashioned so as to avoid unnecessary expense or delay to those who are subject thereto. Further, once set out, such rules must be observed by the Government and applied with an equal hand. And where an administrator is wrong or has not observed the rules of the game, opportunity must be provided to private parties to point this out.

Thus, measuring these two great public needs—efficient, economical attainment of the Government's goals and basic fairness to private parties—one with the other, it becomes readily apparent that they are not at all (as is commonly supposed) antithetical. Rather, they merge and blend, as they should. For Government procedures which are designed to minimize the risk of abuse or mistake will serve both the ends of efficiency and justice. A balance which falls short of this serves neither side.

Obviously, procedures which bring the Government's work virtually to a standstill are unthinkable, and the costs of such folly must eventually be borne by the taxpayers. Equally obvious, a justice which is swift but despotic, or one which is surfeited with due process but results in bankruptcy, is a sham.

Granted, then, that procedures must be constantly attended to with an eye to striking an acceptable balance between these public needs, who is to carry out this task? Who is to conduct the research and continuing examination of procedures which are obviously necessary? Who is to take time from his regular duties to compare the procedures of different agencies, to assemble data, and venture recommendations?

Obviously, no one person can do this, nor, if history is any satisfactory guide, can any intermittent study group do this. But accumulated experience gathered from the operation of the "administrative conferences" which have come and gone over the past decade or so, points in one direction. It indicates, beyond any doubt, that a continuing body, made up of representatives from the Government agencies, together with a sufficient infusion of outside experts to assure objectivity and a variety of views, set up on a permanent basis, will be best equipped to deal with problems of procedural reform. And such an organization should have a legislative foundation reflecting a broad statutory recognition of the permanency of its task and the necessity for its accomplishment.

NEED OF LEGISLATION

Other solutions have been tried but found wanting for various reasons. The administrators themselves—the members of administrative agencies—have generally been too busy with day-to-day tasks, or too understaffed, or perhaps even unwilling, to carry out major reforms. Congress, important as its contributions have been, is too occupied with substantive legislative policy to do more than take a sporadic look at organizational problems of agencies. As to task force study groups, whose usefulness should not be overlooked, their basic weakness stems from a lack of continuity, plus the fact that their primary concern has been with large-scale Government problems, rather than with the day-to-day functioning of agencies. Finally, there is the President. Undeniably, he has the power and duty to assure proper execution of the law. But, however

true this may be in the abstract, the realities of the situation are otherwise. The President would have to delegate his powers to a "czar," who would immediately find himself beset by a host of problems. The vast scope and complexity of the governmental functions involved could hardly be encompassed effectively by one man. His "directives" would not, in all likelihood, be welcomed by the agencies, while, unquestionably, delicate and basic problems regarding the independence of the major regulatory agencies would be raised.

Thus, there are sound reasons, perhaps even inevitable reasons, why legislation creating an Administrative Conference of the United States and reflecting recognition of the following considerations as to its composition, structure, and objectives, is needed.

First, agencies ought to be afforded the opportunity, and be supplied with the necessary machinery, for an attack on their own problems. Separately, the agencies are too small, too busy, and not equipped to erase all the difficulties and procedural inadequacies complained of by their critics. But the interim Administrative Conference, as well as the President's conference of 1953–54, have amply demonstrated that, collectively, and with outside help, agencies are willing and able to attack the most difficult and delicate problems confronting them.

Second, recommendations for changes in agency procedure are most likely to prove effective if they have the wholehearted acceptance and support of the agencies. Recommendations for reform which come from "the outside" may not receive more than begrudging support, if any. But, as recognized by the interim conference, this objective can best be accomplished if the recommendations originate from a group which includes not only agency-designated representatives, but also others who can provide ready and adequate participation from diverse external sources.

Third, since continuing study is absolutely essential to procedural reform and improvement, it is only logical to provide for a permanent conference. Sporadic inquiries and reports, whether they come from Congress or interim groups, provide no satisfactory answer. Administrations change, personnel are shifted, old problems lose their edge of immediacy, in time the reports of interim groups are overlooked, and eventually they are lost in history. Only by constant observation and the continuing application of "accumulating insight" can reforms be achieved. This seems to be the rule in all other areas of life; there is no reason to suppose it does not apply with equal force to procedural reform.

Fourth, there is a genuine need for study and recommendations which are based on varied interests and specialized experiences. The makeup of the Conference—composed as it will be of Government agency representatives, members of the bar, legal scholars, and other experts—will provide a valuable multiple approach to problems. The experience of one agency can be highly useful to another. If, for example, the Federal Communications Commission has devised a fair and efficient method for processing mutually exclusive applications, there is every reason why such methods should be made available to other agencies which handle such applications. Again, by participating in the Conference, an agency confronted by a particularly vexatious problem may find that other agencies share the same problem, in which case common efforts can be directed toward a solution.

In short, participation in the Conference will permit a cross-fertilization of ideas through a cross section of membership.

AUTHORITY WITHIN ITSELF

Fifth, a permanent statutory body will provide the necessary followthrough and effectuation of recommendations. Reports and recommendations, no matter how useful, are not self-executing. Someone must see that they are carried out. This requires education and persuasion which look to the adoption of recommendations, functions best performed by a full-time Chairman of the Conference. Such a Chairman, clothed with stature and responsibility, will be in a position of considerable influence to implement the recommendations of a Conference, not only because of his position, but because he will carry the endorsement of a group of Government and other experts.

Sixth, it would be preferable that ultimate authority over Conference activities should be lodged in its own assembly. This has a twofold advantage. First, recommendations from a large body, drawn both from the Government and outside groups, will command wider and more realistic acceptance, both within and without the agencies, than would be the case if they came from any single

person. Secondly, by vesting ultimate authority in the assembly, there is avoided any tendency by the Chairman to become arbitrary or unrealistic, or to embark on personal "crusades." Although the Chairman will inevitably be the dominant figure in the Conference, he must at all times be able to command the continuing support of the assembly.

As indicated in the opening of this article, the Senate, on October 30, 1963, following the unanimous approval of the Senate Judiciary Committee (S. Rept. 621, 88th Cong., 1st sess.), passed the bill, S. 1664, creating a permanent Administrative Conference of the United States. The Senate bill, as passed, accords full consideration to the factors discussed above and to the testimony of witnesses appearing in the hearings in June 1963 before the Senate Subcommittee on Administrative Practice and Procedure who also discussed features of the other bills introduced in the House by Chairman Oren Harris.[4] S. 1664 had its origin in the recommendations of the interim Administrative Conference, in its final report to President Kennedy. These were, in turn, translated by the Bureau of the Budget into the form of a proposed bill, which was introduced in the Senate by Senator Long as S. 1664.

The bill, as passed by the Senate, would establish a permanent Administrative Conference of the United States, consisting of a chairman, council, and assembly. The Conference would be authorized to—

(*a*) study the efficiency, adequacy, and fairness of the administrative procedure used by agencies in carrying out their programs;

(*b*) make recommendations to agencies, collectively and individually, and to the President, the Congress, or the Judicial Conference of the United States;

(*c*) arrange for interchange among agencies of information which may be useful in improving administrative procedure; and

(*d*) collect information and statistics from agencies and publish such reports as it deems useful for evaluating and improving administrative procedure.

The Chairman of the Conference would be full time, appointed by the President for 5 years, by and with the advice and consent of the Senate.

The Conference would have an 11-man Council, consisting of the Chairman and 10 members appointed by the President for 3-year terms.

The main body of the Conference would be the Assembly, consisting of the Chairman, the Council, and a flexible number of members to be selected by several means. The membership would include the Chairman of each regulatory agency (or a person designated by such agency) and the head of each executive department or other administrative agency designated by the President (or a person designated by the head of such department or agency). It would also contain other appropriate persons; these would include other knowledgeable agency personnel, but it would also include non-Government personnel in such number as will assure full representation of the viewpoints of private citizens and the utilization of diverse experience.

The latter would include members of the practicing bar, scholars in the field of administrative law or government, or others especially informed by knowledge and experience with respect to Federal administrative procedure.

SOME COMMON AGREEMENT

As amended, the jurisdiction of the Conference would be coextensive with that of the Administrative Procedure Act (5 U.S.C. 1001–1011). The Assembly of the Conference would be required to meet at least once annually. The basic powers of the Conference would be to study problems and make recommendations.

---

[4] Four bills on this subject, H.R. 7200, H.R. 7201, H.R. 7202, and H.R. 7203, have been introduced in the House by Representative Oren Harris of Arkansas, chairman of the House Interstate and Foreign Commerce Committee. H.R. 7200 is the House counterpart of S. 1664 as introduced. H.R. 7201 is a general bill incorporating the position of the American Bar Association. Both these bills have been referred to the House Judiciary Committee. As the text points out, S. 1664, as passed, goes a long way toward resolving these differences in approach. H.R. 7202 and H.R. 7203 represent the two basic approaches to a permanent Administrative Conference, but limit it to the six agencies under the legislative jurisdiction of the House Committee on Interstate and Foreign Commerce (i.e., the CAB, FCC, FPC, FTC, ICC, and SEC) and have been referred to that committee. Chairman Harris, on introducing these bills, made it clear that they were his "second choice," but added: "I consider the establishment of a permanent Administrative Conference so important that I would prefer seeing it established on a limited basis rather than having no permanent Conference at all." (109 Congressional Record 10801, daily edition.)

The Conference would have no power whatever to enforce such recommendations.

S. 1664, as adopted by the Senate, also eliminates alternate membership, to assure full and continuous participation by the members; requires that annual and interim reports set forth the compliance of the agencies with the recommendations of the Conference; provides that each member of the Conference shall participate in his individual capacity and not as a representative of any governmental or nongovernmental organization; and provides that non-Government personnel shall be considered as special Government employees for certain conflict-of-interest purposes (18 U.S.C. secs. 203, 205, 207–209).

Whatever the final legislative solution, certain propositions emerge on which there is common agreement. First, the time has long since passed when procedural reforms can be left to the haphazard—and completely inadequate—methods of the past. A permanent Conference in some form is necessary.

Next, a Conference can be highly beneficial to both the agencies and to private practitioners. To agency representatives, a Conference brings hope that something better than the present off-again-on-again methodology will be available for coping with procedural problems. Through a Conference, the agencies will obtain a combined testing laboratory and forum for developing new procedures. Ideas can be exchanged, both with other Government representatives and with private practitioners. Solutions found wanting or defective can be rejected at the threshold, without an agency having to go through the trial-and-error methods used now.

It is, perhaps as much as anything else, the lack of such a forum in the past which has precluded overall effective reform in the field of procedure. But, more importantly, as the experience of the interim Conference indicates, such a Conference can serve as a remarkable catalyst for inspiring fresh perspectives to problems of administrative procedural reform, and to encourage and revitalize the recognition of a need for constantly searching out solutions to problems in this field.

To private practitioners, the Conference carries the hope that many of the delays and expenses which are now so common to administrative proceedings can be reduced or eliminated. At the same time, procedures which take into account the substantial rights of their clients can be developed.

Finally, through participation in this joint venture—for that, in essence, is what the Conference will be—both Government representatives and private practitioners will come to have a more sensitive appreciation for the other side's problems. Without such an appreciation, reform seems at best a dubious prospect. And without reform, there are only totally unacceptable alternatives—delay, expense, misunderstanding, suspicion, and hostility. These should not be allowed to continue.

Now, for the first time in more than a decade, we have before Congress, for its consideration, legislation which carries a high degree of promise for bringing about much-needed improvements. Passage of such legislation would put us well along the road of progress toward procedural reform in public administration.

Mr. WILLIS. We will accept it for our files, and we will determine whether or not to make it a part of the record.

Off the record.

(Discussion off the record at which time Mr. Willis withdrew from the room and Mr. Libonati assumed the chair.)

Mr. LIBONATI. Mr. John H. Pratt, Esq., President of the Bar Association of the District of Columbia, will now be heard.

You have indicated a desire to introduce your testimony.

It is admitted.

(Mr. Pratt's statement is as follows:)

STATEMENT OF JOHN H. PRATT, PRESIDENT OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

My name is John H. Pratt. I am president of the Bar Association of the District of Columbia. It is a pleasure for me to appear before you this morning in support of S. 1664, a bill to create an Administrative Conference of the United States.

The Bar Association of the District of Columbia is of the opinion that the establishmeut of a permanent Administrative Conference is the most effective way to assure the highest degree of cooperation and coordination among the admiuistrative agencies, other branches of the Government, and all segments of our society. With the rapidly increasing importance of the administrative agencies affecting virtually all elements of our society, the bar association feels that the Congress should give its immediate attention to the creation of an Administrative Conference as provided in S. 1664.

The Administrative Law Section of the Bar Association of the District of Columbia has, through its committees, analyzed and considered the various proposals for the creation of an Administrative Conference of the United States. Additionally, many members of our bar association have individually interested themselves in this matter. Not only is tbe consensus of the bar of the District of Columbia, which includes such a great number of practitioners before Federal ageucies, favorable to passage of such a measure as S. 1664, but the sentiment in favor of the measure is close to being unanimous.

When legislation of this character was in a preliminary stage of consideration, it seemed to many lawyers that a number of major problems were inherent therein. Some of these were:

1. Should the majority of members of the Conference be in the employ of the Government, or should the majority consist of people outside of Government?

2. Could or would the Conference influence decisions of any agency of Government?

3. Could or would the Confereuce provide a means of executive domination of independent agencies?

4. Would tbe creation of the Conference merely superimpose another bureaucratic layer on the administrative agencies and thus impede rather thau improve their efficiency?

5. How much authority should be vested in the Chairman of the Conference?

6. Proposed answers to some of these and other questions were contained in the various legislative proposals put forward by the Administrative Conference which expired at the end of 1962, by the Auerican Bar Association, and by the Bureau of the Budget. Naturally, there were variances in these solutions.

In our opinion the consideration given by the Subcommittee ou Administrative Practice and Procedure of the Committee on the Judiciary of the U.S. Senate, including tbe hearings held, resulting in S. 1664, has served to place in proper perspective and to resolve the major issues which have been raised.

Perhaps your study of this bill will indicate that additional amendments are desirable or necessary, but as of now, the Bar Association of the District of Columbia has not discovered any substantial defects or faults in the bill which should be corrected, and, therefore, has no amendments to recommend to you.

All of us are aware of the constructive work of the Judicial Conference of the United States. Although the problems of an Administrative Conference will be more difficult and more numerous than those of the Judicial Conference, we believe, nevertheless, that tbere is good reason to anticipate that, if Congress will create an Administrative Conference, that its achievements will be as substantial as those of the Judicial Conference.

On January 3, 1964, the directors of the Bar Association of the District of Columbia unanimously adopted the following resolution:

"Whereas the recent Administrative Conference of the United States, which expired in December 1962, in its final report to the President, among other things, recommended that such Conference be continued on a permanent basis by appropriate legislation; and

"Whereas the American Bar Association has, for a number of years, also sponsored an Administrative Conference of the United States, to deal with the myriad problems in the field of administrative law; and

"Whereas in February of 1963, the American Bar Association adopted a draft of a bill to create such a Conference and authorized its appropriate agencies to sponsor such bill or legislation substantially equivalent in such purpose and effect; and

"Whereas the Bureau of the Budget also recommended legislation dealing with the subject of an Administrative Conference; and

"Whereas thereafter, this subject was considered by a subcommittee of the Senate Judiciary Committee, which ultimately made a recommendation for legislation, which was approved by the committee in the form of S. 1664; and

"Whereas S. 1664 was thereafter passed by the Senate of the United States; and

"Whereas S. 1664, as passed by the Senate, would attain the principal objectives sought by all of the public and private organizations which have sponsored legislation of this type; and

"Whereas the Bar Association of the District of Columbia is of the opinion that such legislation would be in the public interest: Now, therefore, be it

"*Resolved*, That the Bar Association of the District of Columbia supports the enactment of S. 1664, or legislation substantially equivalent in purpose and effect, and authorizes the officers of the association to transmit these views to the Congress of the United States and to appear before that body in support of such legislation."

It has been an honor for me to appear before and transmit to you the views of the Bar Association of the District of Columbia, in accordance with the foregoing resolution, and I thank you for the consideration which you will give to the association's position on this legislation.

Mr. LIBONATI. You may proceed, Sir.

STATEMENT OF JOHN H. PRATT, PRESIDENT OF THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

Mr. PRATT. My name is John H. Pratt. I am president of the Bar Association of the District of Columbia.

You gentlemen have just heard from Judge Prettyman and my friend Harold Russell. Both of them are experts.

I have a brief statement to read in general support of S. 1664, the Senate bill.

The Bar Association of the District of Columbia is of the opinion that the establishment of a permanent Administrative Conference is the most effective way to assure the highest degree of cooperation and coordination among the administrative agencies, other branches of the Government, and all segments of our society. With the rapidly increasing importance of the administrative agencies affecting virtually all elements of our society, the bar association feels that the Congress should give its immediate attention to the creation of an Administrative Conference as provided in S. 1664.

Now, the administrative law section of the Bar Association of the District of Columbia—incidentally, our association has almost 4,000 members, of whom approximately 1,000 are members of our administrative law section. This section, this administrative law section, through its committees, has analyzed and considered the various proposals for the creation of an Administrative Conference of the United States. Additionally, many members of our bar association have individually interested themselves in this matter.

Not only is the consensus of the Bar of the District of Columbia, which includes such a great number of practitioners before Federal agencies, favorable to passage of such a measure as S. 1664, but the sentiment in favor of the measure is close to being unanimous.

When legislation of this character was in a preliminary state of consideration, it seemed to many lawyers that a number of major problems were inherent therein.

Some of these might be mentioned.

One, should the majority of members of the Conference be in the employ of the Government, or should the majority consist of people outside of Government?

One phase of that was considered this morning when the question was asked of a couple of the witnesses, particularly Judge Prettyman, as to whether agency people should appear in their individual capacity

and represent and appear as individual members, and Judge Prettyman was very definite on that.

The second question might be: Could or would the Conference influence decisions of any agency of Government?

It has been pretty definitely stated they are confining themselves to recommendations with respect to procedural matters, not substantive matters.

Third, could or would the Conference provide a means of executive domination of independent agencies?

Fourth, would the creation of the Conference merely superimpose another bureaucratic layer on the administrative agencies and thus impede rather than improve their efficiency?

Fifth, how much authority should be vested in the Chairman of the Conference?

Now, proposed answers to some of these and other questions were contained in the various legislative proposals put forward by the Administrative Conference which expired at the end of 1962, by the American Bar Association, and by the Bureau of the Budget.

Naturally there are some differences of opinion in these matters. In our opinion, the consideration given by the Subcommittee on Administrative Practices and Procedures of the Committee on the Judiciary of the U.S. Senate, including the hearings held, resulted in S. 1664, which you gentlemen have before you now, and served to place in proper perspective and to resolve the major issues which have been raised.

Perhaps your study of this bill will indicate that additional amendments are desirable or necessary, but as of now, the Bar Association of the District of Columbia has not discovered any substantial defects or faults in the bill which should be corrected, and, therefore, has no amendments to recommend to you.

I would like to point out again, because all of us are aware of the constructive work of the Judiciary Conference of the United States—I am a member of at least four committees of the Judicial Conference for this particular circuit, and I have watched that organization grow from very humble beginnings.

I am familiar, and I gather you gentlemen are too, with the great work this organization is doing over the country and the great work that it promises in the future.

Although the problems of an Administrative Conference will be more difficult and more numerous than those of the Judicial Conference, we believe, nevertheless, that there is good reason to anticipate that, if Congress will create an Administrative Conference, that its achievements will be as substantial as those of the Judicial Conference.

Mr. LIBONATI. Do you present the idea that the Federal courts and circuit court of appeals have ever advocated any legislation which would weaken their power?

Mr. PRATT. I am not familiar with it, Mr. Libonati.

Mr. LIBONATI. Well, you are a practicing lawyer.

Mr. PRATT. I am not familiar that they ever made that suggestion.

Mr. LIBONATI. You bring it out with this question regarding the domination of this organization by means of persons who would be identified with the agencies. They certainly would not weaken their position, would they? No matter if the suggestion were in the nature of facilitating their efficiency, and so forth, would they?

Mr. PRATT. I do not think, as far as their overall jurisdiction, the scope of the agency itself as created by Congress is concerned, I do not think that any chairman of an agency, any general counsel, would advocate a diminution of that area of responsibility.

But, as has been pointed out several times this morning, with respect to matters of procedure, with respect to proposals to increase the efficiency, the ability to get work done, and the creation of an attitude of confidence on the part of the public, which, after all, is the recipient of the action of these various agencies, that a man will——

Mr. LIBONATI. All I am trying to do now, the crux of your problem here is on the question of how you are going to identify the elasticity of the membership, which is in the power of the chairman, and other methods of selecting the members, without some identification as to their prime interest as members of the organization, and whether you feel that even though there are persons who are serving in official capacities in these agencies that this man or person works for, how do you think he is going to act—what point of view he is going to take?

Mr. PRATT. Well, Mr. Chairman——

Mr. LIBONATI. I am talking about the practical application of what we are considering.

Mr. PRATT. That is what I would like to address myself to.

Let us take the little matter, such things as rules of practice, rules of procedure for a particular agency.

There are no two of these agencies that are precisely alike. Some agencies have tended to follow the pattern of other ones, but no two are precisely alike.

Now, I think that if you have got an agency—the same as in the transportation field—that had a reputation for handling its work with dispatch, and it could be pointed out that part of this result was due to the type of rules that they had in terms of the pleadings required, the various time limits that were set, the procedure with respect to a decision by a hearing examiner being final unless challenged, and all of that type of thing—and I am necessarily talking in broad terms—I think some other agencies, just by virtue of learning about this type of thing, and recognizing that they are not giving up a thing if they adopt then this kind of a procedure, might very well become convinced that their best interests lie in adopting something along the same line. But they will not know about it unless they get exposed.

Mr. LIBONATI. We have hearings on a bill here where the American Bar Association demands every lawyer who presents himself before a certain two of these agencies should be permitted to practice without any special accord to his status, or his knowledge of the specialization in which he is now going to plead.

Do you think that these agencies would succumb to that type of askance in the way of procedural preference to be given the lawyers who must not prove they are qualified to practice before those two agencies, in these specialized matters? One is Revenue and the other Commerce. And later on, try to foreclose any person who is now eligible, for instance, a certified public accountant or accountants in general, who now practice before that group?

You see, you are on very delicate grounds even in procedures.

Mr. PRATT. Well, I think conceivably—and I think you are referring to Senator Long's bill, which I think passed the Senate with respect to this matter of lawyers being eligible to practice before various agencies as long as they have been admitted to the bar of the highest court of their State without conforming to particular rules of the agencies.

Mr. LIBONATI. Now, I am only eliciting these answers from you, not to show any partisanship as far as my attitude is concerned, but we have to, in specificity, apply this law in its practical attainments in operation. And we have these other matters before us. There was a highly controversial bill here, which we still have, I think, under consideration, have we not, and the American Bar Association was very adamant about this on the basic prescription that a lawyer is entitled to practice law before any body without any special rules to permit him to show special qualifications to practice before that bureau or that agency.

Do you understand?

Mr. PRATT. I am familiar with that.

Mr. LIBONATI. So that I am just trying to bring out some of the poignant facts that confront us in legislation which we are to make determinations on, questions that would primarily come before this organization which you are seeking to establish. You understand what I am getting at?

Mr. PRATT. I understand.

Mr. LIBONATI. And you must realize this, that we have to determine the general area of coverage, the application of the specific intent that this bill provides and what it affects, and what pertinent questions will be presented in its practical application.

Unless it is definitive to the point then there can be only limitations—and that is all we look for, limitations—in its application; otherwise we are at a loss to pass a bill if it is too broad and if its application is impractical in its acceptance by the Congress. The gentlemen on this committee are lawyers and pretty well versed in their various specializations in the law, as I think you know, Mr. Pratt. Correct?

So I would like to have you as a member of the most important body, the District of Columbia body, which is confronted all the time with these problems, who are retained by other lawyers as lawyer's lawyer, to give us an honest, declaratory statement of what you think that this bill should do, should in its conception touch, and should in its definitive sense avoid.

Because it probably affects you more than any other group of lawyers. You are here on home grounds facing these agencies and bureaus, and probably among your ranks of the 4,000, there are 1,000 specialists, who know more about the operation of the agencies and bureaus and the fallacy of the system than anyone else.

I am talking about the practicing lawyer—outside, of course, the judges of the courts.

I would like to have you point out the pertinent questions that were asked here by the chairman relative to the limitation on numbers to be given appointments here, and these other questions, in order to determine whether or not—I will tell you right now, we are not satis-

fied with the Senate bill, unless you make definitive limitations on the question of membership and the selection to the point where you will not have a top-heavy group that are not representative of the practicing bar and are more representative of the agencies, and so forth, then you would be at a status quo as far as accomplishing anything, if you are going to be set at dead center controlled by the people you are trying to change, in their operations and in their attitudes, and in the assumption of changes in the way of legislation which you will recommend to us.

Am I clear on our position? I ask you to clear up these matters if you can.

Mr. PRATT. Mr. Chairman, you have, I think, probably included a number of questions in your statement.

I would like to speak briefly as an individual and be as responsive as I possibly can to some of the points you have raised.

I think, in looking at the legislation that is now in front of you, and with particular reference to the membership of the assembly and the council and the method of appointment and the number involved, I think it is important to take a look at the history of the two previous Conferences, the one of President Eisenhower and the one of President Kennedy, both with which Judge Prettyman had a great deal to do. If we were concerned with matters of substantive law, I think I would be quite worried about such things as agency dominaton. I would think that any legislation would have to specifically set forth, maybe in terms of percentage, the number of so-called public members or private practitioners who conceivably might be represented; but as I understand——

Mr. LIBONATI. I think you will agree Federal Judge Prettyman brought that out when he spoke here on the question of substantive law.

Mr. PRATT. That is right. But I think when you have got a question of procedure, what you are thinking about is a clearinghouse of experts to try to analyze the problems that are confronting administrative agencies in terms of their own efficiency. And it would be just as simple as that.

I think that the people who are as knowledgeable on this subject are the people Judge Prettyman talked about. Not only the people that run these agencies and their general counsel, of which we have 108, but also the law professors, the political scientists, as well as private practitioners.

I do not think because a man is a general counsel of a particular agency, that he is necessarily wedded to their procedure, if it were demonstrated to him that their procedure has resulted in a backlog of work that might take him 5 years to get through.

The Federal Power Commsison is a perfectly good example of that. They have a backlog that extends years and years and years, and, so I am told, is getting worse. They are doing their best at the moment by various devices, particularly in rate cases, to cut down on this backlog. But I think that that problem is one that faces other agencies as well.

I think that any general counsel would be delighted, if the way would be pointed out to him, whereby the efficiency of his group, his agency, could be improved.

I think that setting up the machinery, such as this legislation provides, even though it has a preponderance of agency personnel, I think is very much a step in the right direction.

And bear this in mind, too, what we are talking about is something that, although permanent legislation is envisaged, it is something that the Congress in its wisdom at any time can call a halt to.

You would hold the purse strings. Any time you want to cut off the water, you can do it perfectly well. And I would think that this committee, among others, would be very much interested in looking at the reports that came in every year.

Gentlemen, it seems to me that the benefits, the possible benefits from this, and the need of such benefits, are so overwhelmingly apparent in a number of areas that almost any step—and the expense envisaged is relatively small compared with the savings—is something that you would seriously consider.

Now, there are a number of other things, Mr. Libonati, that you have alluded to. As I said before I made these comments, I do not profess to be an expert on these matters, such as the two gentlemen who preceded me, but I am speaking as an individual with, I think, a certain reasonable amount of contact, not only with the Federal agencies but with the courts and other branches of the Government here.

I would not be worried a bit about this preponderance of the agency personnel, because we are dealing with matters of procedure.

I think I would be very much concerned if this were a matter that concerned problems of substance. Problems of substantive law. You do not have that.

Mr. LIBONATI. You understand the legislative branch has a hard time guarding and limiting the agencies to their initial powers that were granted to them through legislative enactment.

Mr. PRATT. I know that.

Mr. LIBONATI. They try sometimes innocently or intentionally to overstep those bounds.

Mr. PRATT. That is right.

Mr. LIBONATI. I do not think that the measures before us are complete.

But they are not complete if we do not have limitations upon the personalities that are going to motivate the program and responsibilities that are vested in their group under this law.

And you cannot very well expect the passage of an act to give indiscriminate powers to a group who are given power of appointment to an innumerable number of members for the purpose intended.

I mean every piece of our legislation, except the draft law, is enumerated on limitation. Especially if it requires an appropriation.

You can see the incongruities in any legislation accepting a blanket power to just appoint membership in accordance with what some person feels is necessary, without any rational control in the legislation itself.

I am only fair with you in this respect because, after a bill is passed out of this committee, it is expected on the floor that there be very little debate over its expressed specificity of intention or its language, or the limitations upon it to exert a reasonable activation of its own purposes for the accomplishment of those purposes.

I am honest with you, as the chairman was when he discussed the question of answering on the floor that any such organization that

would expect an unlimited appointive power of its membership and appropriation thereto, whether it amounted to $10 a person or $100 would not make any difference.

So that in the practicalities of this problem we have here, it is primarily not with the principles of the bill, which our distinguished Federal judge, Mr. Prettyman, propounded here, because he most substantially knew what these matters entail in legislative responsibility and legislative appeal; but primarily on those levels that must be defined, and under limitation.

Do I make myself clear?

Mr. PRATT. Yes. I would like to respond to that very briefly.

I take it, Mr. Chairman, you are worried about not only the absence of a limit in terms of numbers, but you are also concerned with the lack of specificity with respect to the type of personnel that the Council of 10, with the Chairman, will appoint.

I think that question is more imaginary than real, and I will tell you why. This is not a matter of having 70 to 80 or 150 jobs. These assignments for the most part are strictly pro bono publico. If you are the general counsel of an agency, you have a full-time job in your agency. And any time that you spend as a member of an administrative conference is time out that you have got to take from something else and you have got to compensate for it somewhere later on.

For the public members, for the members of the bar, for other people, for these schoolteachers, these law school professors, this is something they do out of an interest to see a problem solved.

It is a public service. They are not getting paid for it. So it seems to me you are not faced with a proliferation of appointments; you are not faced with the problem of a number of people wanting to get appointed to these jobs. It is an honorable assignment, but it is a burdensome assignment.

And I think anyone that can be persuaded to take on this kind of a job deserves a pat on the back. As far as the thing getting out of bounds because of there being too many, I do not think there is any possibility of that taking place.

I may be wrong, but that is my opinion.

Mr. LIBONATI. You do not have to take my word for it; I am just trying to guide the situation.

Mr. PRATT. Yes, sir.

Mr. LIBONATI. I know Congressmen go to the seven seas and have briefings of 8 to 10 hours a day from experts who receive us, and the Congressmen live in bivouacs and all types of places. They spend their money on many items that are not covered by the Government's rules and regulations. Then upon their return—maybe we spend anywhere from $800 to $1,000 of our own money—why, we are accused of being on junkets. We make our reports, which probably cover anywhere from 100 to 200 printed pages, as this committee does, and I have written on the neighboring rights and others—you have seen those reports.

Mr. PRATT. Yes, sir.

Mr. LIBONATI. We take down notes for 8 or 10 hours a day, persons who are speaking in a foreign language, which is translated for us on earphones.

These very same men are sitting here now, and you sponsor before them legislation of this type. On their reports they show you what it costs the Government for incidental expenses, fares, and hotel bills and meals, within the $15 or $20 a day bracket—also cab fares and tips, and so forth.

It is very important that every piece of legislation that the Government knows who went where and what was spent. And so in this bill we need specificity for costs.

Mr. PRATT. Many years ago I was a page in the Senate, and those of course were then, as they are now, paid jobs. The number of applicants that were interested in those jobs of course were numerous. As a result, there is a limitation on the number that you can appoint.

But you do not have that problem with this. I think you will have some difficulties persuading people like Professor Nathanson, and some of these others, to be able to tear themselves loose from their heavy work and teaching schedule to give their time to this kind of an enterprise.

Mr. KASTENMEIER. Will the chairman yield?

Mr. LIBONATI. Yes. The gentleman from Wisconsin.

Mr. KASTENMEIER. Chairman Libonati, and I think to some extent Chairman Willis before, indicated some apprehension to at least a couple of witnesses, that the agencies, or at least representatives of the Government, would tend to overload this Conference, and that Government bureaucracy, et cetera, ought to be a subject for others as well.

I think there is also concomitant fear that, indeed, some of the private interests might well be at least as pernicious, in these terms, as would a preponderance of Federal officials, perhaps not the individual practitioner from Louisiana or elsewhere, or even an individual practitioner from Washington as such, but only insofar as he becomes industry representative, association lobbyist, or attorney for a group of clients who, in a sense, regard the commissions and the agencies in an adversary light, as illustrated last week by the broadcasting industry versus the FCC, commented on by a cartoon in the morning Washington paper most eloquently.

Really it is not the agency or the Commission politically that has the power. If we were to curry favor, as Members of Congress, it would not be with five or seven Commissioners, let us say, as opposed to the American broadcasting industry, quite obviously.

So politically I do not feel, in terms of where power lies or construction of commissions or conferences, the fear would be so great that the agency personnel would so dominate it as to perhaps destroy or hurt its usefulness.

But I do wonder about some of the outside interests. I wonder, despite Judge Prettyman's suggestion that this deals with procedures rather than substance, if the point really isn't that by changing procedures you can change a great deal.

We know this from an item as controversial as the civil rights bill. We changed in some instances procedures by statute. This will weigh heavily on the substance of, say, the equities in terms of civil rights.

I am wondering whether you would not agree that procedures, and changing procedures, can affect substance and can affect ultimately major considerations in terms of agency dealings with others?

Mr. PRATT. I would ask the Congressman to be a little bit more specific.

I think, as a general proposition, it is perfectly possible to get procedural matters of such an importance that there is a very fine line between what is a matter of procedure and what is a matter of substance; but if Mr. Kastenmeier will point out a particular matter, I think I might be able to comment a little bit more intelligently.

Mr. KASTENMEIER. I do not think I am competent to discuss procedures within the regulatory agencies.

By alluding to civil rights, I had in mind giving the Attorney General the discretion to bring voting cases before a three-judge court rather than a Federal district court.

Mr. PRATT. Yes.

Mr. KASTENMEIER. This was for a very obvious reason. This was only procedure and had nothing to do with the merits of the case. These were voting cases—particularly in the South. This was a change in procedure which is going to change substantially, presumably, treatment of voting cases in the South and to some extent the outcome. We have no doubt about that.

Mr. PRATT. Well, carrying that one step further, the power of a Federal judge in the South to punish for contempt with or without a jury trial—which is the problem, of course, the Supreme Court has now with regard to Governor Barnett—that is a procedure. But the determination of that question may determine the whole outcome of the case.

Well, it is difficult to translate that type of problem into the kind of a thing that Judge Prettyman is talking about. At least, it is for me. It may be possible, but I do not see it at the present time.

Mr. KASTENMEIER. Do you think this will be designed largely to promote efficiency and expedition.

Mr. PRATT. I think it is a promotion of efficiency, at the same time preserving all of the elements of due process. I am thinking of proper notice, proper hearing, opportunity to cross-examine, and that type of thing. And I think what has happened is frequently we have carried our notions of due process so far that some of these proceedings, some of these matters have gotten completely out of bounds.

Look at the records in some of these administrative hearings, in the repetitive nature of the testimony, the cumulative nature of the exhibits and that sort of thing. You wonder how an administrative process can survive that type of thing.

I am sure that is the type of thing they are talking about.

Mr. KASTENMEIER. But again, you do not see that change in procedures would affect substance or outcome?

Mr. PRATT. The purpose and functions of administrative conference? No, sir I do not. With respect to the matter that the Chairman raised that has been raised before, in view of the scope of the administrative conferences, as stated, it does not bother me that a preponderance of the people composing the conference come from the Government agencies affected.

I say that as one who has never worked for the Government except for the one time I mentioned.

Mr. KASTENMEIER. Thank you.

Mr. CAHILL. May I ask this question?

Mr. LIBONATI. Yes.

Mr. CAHILL. Is it your experience as a Washington attorney that the regulations of these individual agencies are usually formulated and promulgated without any considerations to the overall regulations of other agencies?

In other words, there is lack of uniformity?

Mr. PRATT. I think that is very definitely true. Some of them start off initially being patterned after another agency. For example, the regulations I think under the Motor Carriers Act were very closely patterned after the Interstate Commerce Commission, of which the Motor Carriers Bureau is a part.

Mr. CAHILL. It apparently is your experience that each individual agency on its own initiative without consultation revises and expands regulations in order to suit their particular purposes. If so this would create great confusion in the minds of the practitioner, who must learn the rules of all of the regulatory agencies?

Mr. PRATT. I do not think, Mr. Cahill, the problem of the practitioners, sir, is the important one. I think any lawyer worth his salt can learn what the rules are.

But as far as the promulgation is concerned, it is done, I think, by individual agencies almost operating in a vacum, without reference to what the other people do.

Mr. CAHILL. Whereas it is your thought that this conference might develop some system of uniformity?

Mr. PRATT. Well, some system of handling specific problems maybe within the framework of their existing regulations. I would say the problem Judge Prettyman talked about, the matter of delay, which can happen in various phases of the whole process, that is the problem.

Mr. CAHILL. Thank you.

Mr. LIBONATI. That is all, sir. Thank you very much for your contribution.

Mr. PRATT. Thank you, gentlemen.

Mr. LIBONATI. Mr. Seidman is the next witness. Mr. Seidman, do you care to file a report?

STATEMENT OF HAROLD SEIDMAN, ACTING ASSISTANT DIRECTOR, OFFICE OF MANAGEMENT AND ORGANIZATION, BUREAU OF THE BUDGET; ACCOMPANIED BY MISS HAZEL GUFFEY

Mr. SEIDMAN. I have a prepared statement, Mr. Chairman, and with your permission, I will read it. It is not a very long statement.

(The statement referred to follows:)

STATEMENT OF HAROLD SEIDMAN, ACTING ASSISTANT DIRECTOR, OFFICE OF MANAGEMENT AND ORGANIZATION, BUREAU OF THE BUDGET

Mr. Chairman and members of the committee, I appreciate this opportunity to give you the views of the Bureau of the Budget with respect to the three bills you have under consideration to create a permanent Administrative Conference of the United States.

The language of H.R. 7200 and of S. 1664 as originally introduced in the Senate was drafted in the executive branch to carry out a recommendation of the recent Administrative Conference that a permanent conference be established by law. In testimony at the Senate hearing on S. 1664, the Deputy Director of the Bureau of the Budget expressed the Bureau's support for a statutory conference along the lines of that bill. Therefore, I believe it would save your time

if I limit my general statement today primarily to certain problems raised by the Senate amendments to S. 1664 which we believe warrant earnest consideration by this committee. Those amendments are as follows:

1. The word "predonderantly" was dropped from sections 4(b) and 6(b) of S. 1664. Those were complementary provisions which would assure that the Conference and its executive committee, the Council, would be composed preponderantly of Federal officials and personnel. A related amendment to section 4(b)(6) provides for "full," rather than "adequate," representation of the viewpoints and diverse experience of persons from private life in the Conference membership.

2. A new provision in section 6(e) would direct each member of the Conference to "participate in his individual capacity and not as a representative of any governmental or nongovernmental organization."

3. The provisions of section 3 of S. 1664 which would have directed the work of the Conference primarily toward regulatory programs in which Federal agencies perform quasi-legislative or quasi-judicial functions were eliminated or amended. As a result, the Conference would be given a broader scope, exactly how broad apparently being a matter of some uncertainty.

These amendments, taken together, would change the character of the proposed Conference so basically as to cast serious douht on the desirability of its creation under Federal law. As introduced, S. 1664 and H.R. 7200 would have established an official agency of the Federal Government. The bills were designed to carry out the Conference recommendation that a permanent Conference be constituted primarily as an interagency body through which the agencies themselves could work to improve their administrative procedure. The proposed membership of the Conference would have been consistent with that intent. However, to promote objectivity and fresh ideas the bills also provided for the membership of private persons uniquely qualified to provide expert advice and responsible criticism.

The Senate made no changes in the purpose of the bill as set forth in section 2(e). Nevertheless, the amendments to sections 4(b) and 6(b) would make it possible for the Conference, an official Government body, to be dominated by private parties, who could use the Conference as a sounding-board for private interests. That possibility is reinforced by Senate Report No. 621, which emphasizes that the President should have discretion in appointing Council members and that the ratio of Government to non-Government personnel in the Conference as a whole should be left to the Chairman and the Council. It is further reinforced by the Sente amendment which would require "full," rather than "adequate," representation of the viewpoints of private citizens. When these amendments are taken together, it could reasonably be argued that the intent was to reverse the original concept of a Conference primarily of and for the agencies to enable them to help themselves. The amendments could subject the Chairman and the Council to unnecessary and time-consuming pressures, since it is the Chairman, with the approval of the Council, who would appoint members of the Conference from private life. In addition, the amendments would create practical problems in establishing a Conference of workable size.

Proponents of a permanent Administrative Conference rely heavily on the Judicial Conference of the United States as a precedent. That Conference, of course, consists entirely of Federal judges. The Chief Justice himself summons the Conference and is its presiding officer. There is no question that it is an official body, the instrument through which the judges themselves seek to improve the operation of the courts. The viewpoints of private citizens on particular matters are obtained through special advisory committees or study groups, which make recommendations to the Conference.

The temporary Administrative Conferences called by President Eisenhower in 1953 and by President Kennedy in 1961 departed from the precedent of the Judicial Conference of the United States by providing for appointment of members from private life. In both Conferences, however, their official character was recognized through the appointment of a majority of members from the Federal agencies. The value of outside participation was demonstrated in those Conferences; that should not, however, cause us to forget that improvement of procedure is chiefly dependent on action by the agencies themselves. We believe the organization of the Conference as defined in law should underline, rather than dilute, the official responsibility of the agencies for assuring that desirable improvements are identified and made by them when possible or recommended to Congress if legislation is necessary.

In addition to the amendments affecting its composition, the official character of the proposed Conference is further weakened by the amendment in section 6(e) which provides that each member of the Conference shall act in his individual capacity and not as a representative of any governmental or nongovernmental organization. This is an unrealistic provision insofar as Government members are concerned. A number of agencies which commented to us on this amendment expressed the view that agency members were responsive to the views of their agencies in the last Conference, despite similar language in the Executive order which established the Conference, and that they will continue to be even if the language in question should remain in legislation finally enacted.

Omission of the language would not mean, of course, that agency members could speak or vote only "under instruction," and therefore could not be intelligently responsive to floor debate. Agency officials rely on Federal employees to represent their agencies in a great variety of situations, including testimony before congressional committees. That representation could not be effective if employees were presenting personal views, rather than the views of their agencies. Agency officials designate employees whom they can rely upon to reflect views that are consistent with the needs and policies of their agencies, and they can change their designation if they find that such reliance has been misplaced.

The primary effect of this amendment then would be to dilute even more the official interagency character of the undertaking and to free agency heads from any real responsibility for the success of the Conference. In addition, it would place Federal employees in an awkward and untenable position. If it should be concluded that a Conference of individual experts, acting in their private capacities, would have greater value than one which included agency representatives it would seem preferable that it be created as a private organization through individual initiative and not through law as an official agency of the Federal Government.

There is no evidence that these Senate amendments I have described are needed in order to prevent blind adherence to the status quo. On the contrary, the report of the last Conference states that the Conference proved the agencies "will aggressively attack their own shortcomings." The truth of that statement is evident in the prompt action taken by agencies on the recommendations made by the last Conference.

In preparation for the Senate hearing on S. 1664 in June 1963, Bureau staff prepared a summary and analysis of agency reports to the Bureau expressing their views and indicating the status of action on recommendations contained in the final report of the last Conference, which was transmitted to the President on December 15, 1962. The summary was incomplete because of time limitations, but it dealt with reports of 38 Federal agencies with respect to 21 recommendations. Those 21 recommendations, however, accounted for 583 separate instances in which a recommendation was applicable to an activity carried on by a reporting agency.

In 510 instances where evaluation of a recommendation was completed, 398 or 78 percent of the agency responses expressed complete approval of the recommendation; another 56 or 10 percent expressed approval in principle although some modification was deemed necessary to achieve the objective of the recommendation in the responding agency. Recommendations were disapproved for use in the agency in only 20 instances, approximately 3½ percent of the total on which evaluation was completed.

Reports on the status of action to carry out the recommendations were equally gratifying. Of 331 approved recommendations which the individual agencies had authority to carry out immediately, 75 percent were in effect prior to June 13, 1963, and action was underway or had been definitely scheduled in another 20 percent.

In addition to improvements resulting from recommendations of the last Administrative Conference, the regulatory agencies have improved their operations and reduced delays in a variety of other ways. A few examples are described in a chapter on regulatory administration which appears in a Bureau publication of April 1963, entitled "Cost Reduction Through Better Management in the Federal Government." I will be glad to leave a copy of that publication with the committee, and other copies are available if needed. The examples in that publication along with the prompt action taken on recommendations of the Conference show conclusively, I think, that the agencies are working to improve their own performance and can be relied upon to continue to do so.

The next Senate amendments I would like to discuss relate to section 3 of S. 1664. As explained in the accompanying Senate Report 621, the amendments

to section 3 purport to "make the jurisdiction of the Conference coextensive with that of the Administrative Procedure Act itself." If that language is intended to mean that only those matters which are governed by the Administrative Procedure Act shall be within the scope of the Conference, then it narrows the scope of the Conference from that set out in the original bill. Clearly that is not the intent, since the Senate report also indicates an intent to broaden the jurisdiction of the Conference "to include the study of all problems arising out of the Administrative Procedure Act."

Analysis of the amendments shows that their minimum effect would be to bring within the scope of this Conference, which would be created to improve administrative procedure, a variety of matters which, as a matter of policy, Congress has specifically excluded from coverage of the procedural sections of the Administrative Procedure Act. These are matters having little in common with the regulatory programs of Government. Despite their great diversity, regulatory, programs have enough in common to warrant an interagency approach to procedural improvement. In general, these matters of common interest relate to the procedures followed in dealing with matters which affect private rights. Unless a substantial degree of common interest is maintained the interest and participation of the agencies cannot be maintained at a high level. Top Federal officials are simply too busy to spend official time studying questions or attending meetings which have no bearing on their agency responsibilities. We believe the problems of the major regulatory agencies should and inevitably will dominate the Conference. Therefore we would urge that the statutory mandate of the Conference be limited to those areas which represent the broad common concern of the independent regulatory agencies and the executive departments. Unless this is done it will be virtually impossible to create a Conference of workable size which provides appropriate representation for all the affected agencies and private interests.

To overcome these major problems which I have discussed, the Bureau of the Budget urges that this committee approve the original language of S. 1664 and H.R. 7200 as they relate to the scope of the Conference and the composition of the Conference and the Council.

An amendment to section 6(c)(12) of S. 1664 also should be mentioned. That amendment would require that the Chairman's annual reports shall set forth "the compliance of the agencies with the recommendations of the Conference." Use of the word "compliance" tends to connote an agency obligation to follow Conference recommendations. The remainder of the bill, however, makes clear that recommendations are advisory only, and that each agency is expected to act on them in the manner deemed appropriate to the particular public program which the agency administers. I believe there is general agreement that the diversity of Federal programs precludes the establishment of uniform procedure in all cases. The Conference should be free to recommend procedures which it deems desirable in most programs, and agencies should be free to depart from the recommendations whenever departure is in the public interest.

In conclusion, I would like to reaffirm the Bureau's support for legislation which would provide a suitable organization through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for consideration by the appropriate Federal authorities. Experience has demonstrated that such a Conference can produce results that are in the public interest.

Mr. SEIDMAN. I think it is addressed mainly to the points at issue.

I would like to first introduce my colleague on my right, Miss Hazel Guffey, a member of my staff in the Bureau of the Budget.

Mr. LIBONATI. We are glad to have you appear.

Mr. SEIDMAN. With your permission, Mr. Chairman, I will proceed with my statement.

Mr. Chairman and members of the committee, I appreciate this opportunity to give you the views of the Bureau of the Budget with respect to the three bills you have under consideration to create a permanent Administrative Conference of the United States.

The language of H.R. 7200 and of S. 1664 as originally introduced in the Senate was drafted in the executive branch to carry out a recom-

mendation of the recent Administrative Conference that a permanent Conference be established by law.

In testimony at the Senate hearing on S. 1664, the Deputy Director of the Bureau of the Budget expressed the Bureau's support for a statutory Conference along the lines of that bill.

Therefore, I believe it would save your time if I limit my general statement today primarily to certain problems raised by the Senate amendments to S. 1664 which we believe warrant earnest consideration by this committee. These amendments are as follows:

1. The word "preponderantly" was dropped from section 4(b) and section 6(b) of S. 1664. Those were complementary provisions which would assure that the Conference and its executive committee, the Council, would be composed preponderantly of Federal officials and personnel. A related amendment to section 4(b)(6) provides for "full," rather than "adequate," representation of the viewpoints and diverse experience of persons from private life in the Conference membership.

2. A new provision in section 6(e) would direct each member of the Conference to "participate in his individual capacity and not as a representative of any governmental or nongovernmental organization."

3. The provisions of section 3 of S. 1664 which would have directed the work of the Conference primarily toward regulatory programs in which Federal agencies perform quasi-legislative or quasi-judicial functions were eliminated or amended. As a result, the Conference would be given a broader scope, exactly how broad apparently being a matter of some uncertainty.

These amendments, taken together, would change the character of the proposed Conference so basically as to cast serious doubt on the desirability of its creation under Federal law.

As introduced, S. 1664 and H.R. 7200 would have established an official agency of the Federal Government.

The bills were designed to carry out the Conference recommendation that a permanent Conference be constituted primarily as an interagency body through which the agencies themselves could work to improve their administrative procedure. The proposed membership of the Conference would have been consistent with that intent.

However, to promote objectivity and fresh ideas, the bills also provided for the membership of private persons uniquely qualified to provide expert advice and responsible criticism.

The Senate made no changes in the purpose of the bill as set forth in section 2(e). Nevertheless, the amendments to sections 4(b) and 6(b) would make it possible for the Conference, an official Government body, to be dominated by private parties, who could use the Conference as a sounding board for private interest.

That possibility is reinforced by Senate Report 621, which emphasizes that the President should have discretion in appointing Council members and that the ratio of Government to non-Government personnel in the Conference as a whole should be left to the Chairman and the Council.

It is further reinforced by the Senate amendment which would require "full," rather than "adequate," representation of the viewpoints of private citizens. When these amendments are taken together, it

could reasonably be argued that the intent was to reverse the original concept of a Conference primarily of and for the agencies to enable them to help themselves.

The amendments could subject the Chairman and the Council to unnecessary and time-consuming pressures, since it is the Chairman, with the approval of the Council, who would appoint members of the conference from private life. In addition, the amendments would create practical problems in establishing a Conference of workable size.

I might add, Mr. Chairman, I sat through the morning listening to the other witnesses and I am rather puzzled. It seems to me there is a general consensus that this is to be primarily an agency Conference, of which the primary members and the majority members inevitably would have to be from the agencies involved.

After all, those are the ones who have the responsibility to act.

Mr. LIBONATI. The way you talk, you seem to have been taken in.

Mr. SEIDMAN. No, sir; it seems to me that this is our view.

In fact, if it were anything else, we would have serious objection to enactment of legislation, if it were something other than an agency Conference as the policy statement in the bill itself says.

Mr. LIBONATI. You mean to say the original intent was carried out, and now these amendments have destroyed the bill in that regard, and therefore you recommend it in its present form; it should not be enacted. Is that correct?

Mr. SEIDMAN. That is correct.

Mr. Chairman, if you will bear with me, the statement of the purpose of the bill—this is in section 2(e) which is unamended—is that "Experience has demonstrated that cooperative effort among Federal officials, assisted by private citizens and others whose interest, competence, and objectivity enable them to make a unique contribution, can find solutions to complex problems and achieve substantial progress in improving the effectiveness of administrative procedure."

The point I wish to make is, I think the purpose of the bill states this, this is to be a Conference primarily of the agencies and for the agencies, with outside participation to bring in some fresh viewpoints from the outside. It is not to be a Conference dominated by private interests. I do not think there is any dispute about this intent.

If this is the intent, I cannot understand the objection to having it so specified in the law.

It seems to me that the Congress should not leave this to the discretion of the President and coming from where I do in the Executive Office of the President, it might be assumed I would always be arguing the maximum Presidential discretion; but I do not think a matter of this kind should be left as a matter of discretion.

If this is the intent, I cannot understand why there then is objection to the law so stating.

It seems to me that the Congress should state what the intent of the law is, if this is what is desired, that this be a Conference preponderantly of agency personnel.

I have no brief for the word "preponderantly." This is a vague word. There are other means of achieving the purpose such as by providing either a numerical or percentage limitation on the number of outside people who may be appointed to participate in the Conference.

Mr. LIBONATI. Was it ever called to your attention what changes they have been considering?

Mr. SEIDMAN. No, sir. It was not.

Mr. LIBONATI. Well, it seems they are very enthusiastic about contributing improvements to the present operation of the Government units and agencies, to save $100 million they said and cut down 10 percent at the very inception of their Conference.

If you will recall, the chairman said that he was very surprised that they would be able to do that.

Mr. SEIDMAN. I do not know on what the estimates of savings are based. We do support an Administrative Conference. We do think it can make a constructive contribution to improved administrative procedure. In order to do this, we think it will have to be so organized as to command the confidence and to obtain acceptance by the agencies concerned.

I do not think we can accomplish this by either direction or coercion.

Mr. LIBONATI. Of course, on the other hand, if they have some suggestion, you have a second crack at it with the Congress. No matter what their control is within the Conference itself, they have to come to the Congress for legislation to make these corrections, is that true?

Mr. SEIDMAN. This is entirely correct unless it is something on which the agencies have authority to act.

Mr. LIBONATI. Or they have to go to your agency or some specific agency and recommend to them changes that are solely within their province to suggest only in view of the purposes delegated to them this right to organize and to activate their operation.

Mr. SEIDMAN. This is entirely correct, Mr. Chairman.

Mr. LIBONATI. Right?

Mr. SEIDMAN. But I would submit that we are creating here a permanent agency of the U.S. Government. In fact, I know of no precedent for providing a permanent agency in which you have people participating in private capacities, or which could be dominated by people acting in their private capacities.

Mr. LIBONATI. I think you are very apprehensive because of the enthusiasm with which they talked about these other programs that they would initiate affecting your operation, and especially that one which gives them somewhat of a—I would call it a resolve, in the nature of a resolution, to investigate contracts that have been consummated and then make determinations on the equities involved.

I think that is what you are a little fearful of. It would be like a court of review without having juridical or judicial powers.

Mr. SEIDMAN. I am sure, Mr. Chairman, some of the agencies concerned might have this fear. Of course, the Bureau of the Budget does not have any very significant contracts.

I think we are reasonably neutral. We have the same objective, because, as you know, under the Budget and Accounting Procedures Act, the Budget Bureau has the responsibility for improving management in the executive branch of the Government.

Proponents of a permanent Administrative Conference rely heavily on the Judicial Conference of the United States as a precedent. That Conference, of course, consists entirely of Federal judges.

The Chief Justice himself summons the Conference and is its presiding officer.

There is no question that it is an official body, the instrument through which the judges themselves seek to improve the operation of the courts. The viewpoints of private citizens on particular matters are obtained through special advisory committees or study groups, which make recommendations to the Conference.

The temporary Administrative Conferences, called by President Eisenhower in 1953 and by President Kennedy in 1961, departed from the precedent of the Judicial Conference of the United States by providing for appointment of members from private life.

In both Conferences, however, their official character was recognized through the appointment of a majority of members from the Federal agencies.

The value of outside participation was demonstrated in those Conferences; that should not, however, cause us to forget that improvement of procedure is chiefly dependent on action by the agencies themselves.

We believe that the organization of the Conference as defined in law should underline, rather than dilute, the official responsibility of the agencies for assuring that desirable improvements are identified and made by them when possible or recommended to Congress if legislation is necessary.

I might again comment here—it is not in my prepared statement—on the suggestion made by Mr. Russell on behalf of the American Bar Association in which he referred to the possibility that the Conference might be used as a "wailing wall" to which people could come with complaints from the outside.

This suggestion rather concerns me. If the Conference should become a focal point for people with complaints about the agencies it would be highly destructive to the purposes we are seeking.

This proposal was discussed in the Conference; I was a member of the Administrative Conference of the United States in which it was suggested the permanent Conference should act as an "ombudsman," a Scandinavian term. The "ombudsman" evidently has authority to receive and act on complaints. When a private citizen has a complaint against one of the administrative agencies, he can bring it to the "ombudsman," who will conduct an investigation.

This suggestion was not accepted by the Conference, and at least in my expectation, I do not anticipate that the Conference will become a "wailing wall" or that the Chairman of the Conference—and we do support having a strong Chairman—would be in a position to exercise direction over any of the regulatory agencies.

In addition to the amendments affecting its composition, the official character of the proposed Conference is further weakened by the amendment in section 6(e) which provides that each member of the Conference shall act in his individual capacity and not as a representative of any governmental or nongovernmental organization.

This is an unrealistic provision insofar as Government members are concerned. A number of agencies which commented to us on this amendment expressed the view that agency members were responsive to the views of their agencies in the last Conference, despite similar language in the Executive order which established the Conference, and that they will continue to be even if the language in question should remain in legislation finally enacted.

Omission of the language would not mean, of course, that agency members could speak or vote only "under instruction," and therefore could not be intelligently responsive to floor debate.

Agency officials rely on Federal employees to represent their agencies in a great variety of situations, including testimony before congressional committees.

That representation could not be effective if employees were presenting personal views, rather than the views of their agencies. Agency officials designate employees whom they can rely upon to reflect views that are consistent with the needs and policies of their agencies, and they can change their designation if they find that such reliance has been misplaced.

The primary effect of this amendment then would be to dilute even more the official interagency character of the undertaking and to free agency heads from any real responsibility for the success of the Conference.

In addition, it would place Federal employees in an awkward and untenable position. If it should be concluded that a Conference of individual experts, acting in their private capacities, would have greater value than one which included agency representatives it would seem preferable that it be created as a private organization through individual initiative and not through law as an official agency of the Federal Government.

There is no evidence that these Senate amendments I have described are needed in order to prevent blind adherence to the status quo. On the contrary, the report of the last Conference states that the Conference proved the agencies "will aggressively attack their own shortcomings."

The truth of that statement is evident in the prompt action taken by agencies on the recommendations made by the last Conference.

In preparation for the Senate hearing on S. 1664 in June 1963, Bureau staff prepared a summary and analysis of agency reports to the Bureau expressing their views and indicating the status of action on recommendations contained in the final report of the last Conference, which was transmitted to the President on December 15, 1962.

The summary was incomplete because of time limitations, but it dealt with reports of 38 Federal agencies with respect to 21 recommendations. Those 21 recommendations, however, accounted for 583 separate instances in which a recommendation was applicable to an activity carried on by a reporting agency.

In 510 instances where evaluation of a recommendation was completed, 398, or 78 percent of the agency responses expressed complete approval of the recommendation; another 56, or 10 percent, expressed approval in principal although some modification was deemed necessary to achieve the objective of the recommendation in the responding agency. Recommendations were disapproved for use in the agency in only 20 instances, approximately 3½ percent of the total on which evaluation was completed.

Reports on the status of action to carry out the recommendations were equally gratifying. Of 331 approved recommendations which the individual agencies had authority to carry out immediately, 75 percent were in effect prior to June 13, 1963, and action was underway or had been definitely scheduled in another 20 percent.

In addition to the improvements resulting from recommendations of the last Administrative Conference, the regulatory agencies have improved their operations and reduced delays in a variety of other ways.

A few examples are described in a chapter on "Regulatory Administration" which appears in a Bureau publication of April 1963, entitled "Cost Reduction Through Better Management in the Federal Government."

Mr. Chairman, if you would like, I can leave a couple of copies of this report for the committee files. You will find pages 54 through 59 of this publication indicate some of the actions which the regulatory agencies have taken on their own initiative to improve efficiency.

Mr. LIBONATI. It may be received.

(The document referred to is in the files of the subcommittee.)

Mr. SEIDMAN. I will be glad to leave a copy of that publication with the committee, and other copies are available if needed. The examples in that publication along with the prompt action taken on recommendations of the Conference show conclusively, I think, that the agencies are working to improve their own performance and can be relied upon to continue to do so.

The next Senate amendments I would like to discuss relate to section 3 of S. 1664. As explained in the accompanying Senate Report No. 621, the amendments to section 3 purport to "make the jurisdiction of the Conference coextensive with that of the Administrative Procedure Act itself."

If that language is intended to mean that only those matters which are governed by the Administrative Procedure Act shall be within the scope of the Conference, then it narrows the scope of the Conference from that set out in the original bill. Clearly that is not the intent, since the Senate report also indicates an intent to broaden the jurisdiction of the Conference "to include the study of all problems arising out of the Administrative Procedure Act."

Analysis of the amendments shows that their minimum effort would be to bring within the scope of this Conference, which would be created to improve administrative procedure, a variety of matters which, as a matter of policy, Congress has specifically excluded from coverage of the procedural sections of the Administrative Procedure Act.

These are matters having little in common with the regulatory programs of Government. Despite their great diversity, regulatory programs have enough in common to warrant an interagency approach to procedural improvement.

In general, these matters of common interest relate to the procedures followed in dealing with matters which affect private rights.

Unless a substantial degree of common interest is maintained, the interest and participation of the agencies cannot be maintained at a high level.

Top Federal officials are simply too busy to spend official time studying questions or attending meetings which have no bearing on their agency responsibilities.

This has been the curse of many interagency committees, when people do not participate after a while because 90 percent of what is discussed in the committee has no bearing on their agency.

We believe the problems of the major regulatory agencies should and inevitably will dominate the Conference. Therefore we would

urge that the statutory mandate of the Conference be limited to those areas which represent the broad common concern of the independent regulatory agencies and the executive departments. Unless this is done it will be virtually impossible to create a Conference of workable size which provides appropriate representation for all the affected agencies and private interests.

To overcome these major problems which I have discussed, the Bureau of the Budget urges that this committee approve the original language of S. 1664 and H.R. 7200 as they relate to the scope of the Conference and the composition of the Conference and the Council.

An amendment to section 6(c)(12) of S. 1664 also should be mentioned. That amendment would require that the Chairman's annual reports shall set forth "the compliance of the agencies with the recommendations of the Conference." Use of the word "compliance" tends to connote an agency obligation to follow Conference recommendations.

The remainder of the bill, however, makes clear that recommendations are advisory only, and that each agency is expected to act on them in the manner deemed appropriate to the particular public program which the agency administers. I believe there is general agreement that the diversity of Federal programs precludes the establishment of uniform procedure in all cases.

The Conference should be free to recommend procedures which it deems desirable in most programs, and agencies should be free to depart from the recommendations whenever departure is in the public interest.

In conclusion, I would like to reaffirm the Bureau's support for legislation which would provide a suitable organization through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for consideration by the appropriate Federal authorities.

Experience has demonstrated that such a Conference can produce results that are in the public interest.

I think that is our primary concern, Mr. Chairman, that this Conference be constituted in such a way that it will produce results and will not be merely a research organization or debating society, though private organizations of that type serve a very useful purpose. We are interested in a conference that will produce constructive results.

I might add also we did ask the agencies for their views on the Senate amendments and not all of them, of course, had any concern with the amendments, because they did not affect their operation. But a majority of those agencies which would be affected by the Senate amendments indicated views along the general line of those I have expressed this afternoon.

Mr. LIBONATI. I notice you used the term "assisted by outside experts."

Mr. SEIDMAN. That is correct.

Mr. LIBONATI. In other words, you do not want domination or guidance, or control?

Mr. SEIDMAN. That is correct.

There is an old saying, Mr. Chairman, that experts should be on tap and not on top.

Mr. LIBONATI. Well, you know the old saying: If you lead the trunk into the tent, the elephant comes in?

But really, I do not see where you are very far apart if the bill is again, may I use the word, definitive, and in conformity with what the sponsors of the bill seek to accomplish. Because in here you state that Federal officials are too busy, due to the responsibility of their work to go over, give time for all of these questions, and certainly they do not have time to answer complaints. But it is just a question of the delineation between the powers of the agency in accordance with the act which brings it into being to control your own affairs as far as activating their operations.

Mr. SEIDMAN. That is correct.

Mr. LIBONATI. Now, did you testify before the Senate committee

Mr. SEIDMAN. Yes, we did. And the bill, as introduced in S. 1664 was drafted in the Bureau of the Budget after rather lengthly consultations with the representatives of the Administrative Conference and the American Bar Association.

I agree, Mr. Chairman, I do not think we are far apart, but I think the differences are of considerable significance.

As I said, the first one, on the intent, that it should be an agency conference, there seems to be consensus on that but there seems to be a lack of consensus as to whether the law should so state.

As I say, I am rather baffled; if everybody is in agreement, it seems to me the Congress should so provide and not leave it as a matter of discretion.

I think the second one, this is an honest difference concerning whether people should appear in their individual capacities or their official capacities. There is some misunderstanding about the way the executive branch operates.

Now, S. 1664, as drafted by the Bureau, was silent on this. We did not say that they had to appear in an official or representative capacity. We left this to the discretion of the agencies concerned.

Mr. LIBONATI. Well, you do not disagree that the bill should be so informant, do you? After all, they have to be given a status.

Mr. SEIDMAN. We strongly object to the bill providing that a member designated by an agency head must serve in a private capacity. This I think is a contradiction. We see no need for such a provision in that this should be a matter between the member and his superior.

Now, I appear many times, as I am appearing here today; the Director of the Bureau of the Budget gives me general policy instructions. I do not have to go back to him in order to respond to questions which the chairman raises with me. We have many bodies in the Government where people appear in their official capacity but it does not mean they are necessarily instructed and have to go back for instructions on every single item that comes up in the group.

I have, for example, attached to my Office an Advisory Council of Agencies on Automatic Data Processing Equipment. The members of this Council are representatives of their agencies in an official capacity; we talk about the very things this Conference does, improvement in procedure, improvement in carrying on work. They appear as experts and their instructions can be extremely broad as to what they can do.

But they are there as officials and they are not there as private individuals. It seems to me this is a contradiction in terms here. I think sincerely it comes out of some misunderstanding as to how in

ternal business within the executive branch of the Government is conducted.

Mr. LIBONATI. You are not against giving them authoritative capacity to spend Federal moneys for these purposes?

Mr. SEIDMAN. No. Mr. Chairman, my only point is that as far as the members of a Conference of the agencies are concerned, they should be there in an official capacity and not in an individual capacity.

This does not mean in an instructed capacity, it does not mean that they cannot fully participate; but they are there as public officials and not as private citizens.

Now, as far as the private members are concerned, I think it is important that they not be selected to represent outside groups because they are there as technical experts and not as representatives of groups in the community

It seems to me that some of this is just a misunderstanding rather than really a deep-seated difference of view.

Mr. LIBONATI. Well, I really do not believe the classification is necessary. I mean, to classify those who work for the agencies as representing themselves as individuals. I do not think it means anything.

Mr. SEIDMAN. That is correct, as I said, we do not think any language is necessary.

Mr. LIBONATI. I think the most important contributions are by individuals who are specialists in private life, in the universities, and so forth, and economists, and so forth, who are authorities in their subject, to fit into these determinations and give a highly skilled opinion, basically informed, because of their training.

Mr. SEIDMAN. That is correct.

Mr. LIBONATI. I think they are the most important. They are going to advise the changes, if any are going to improve the procedures, I mean, and argue for it, and propound their theories to the point where they can be practically put into action by the agencies.

Mr. SEIDMAN. We hope they will be able to be persuasive in presenting it. But in the final analysis, they will have to be able to persuade.

Mr. LIBONATI. Comes from new thought, new ideas, and new application of old ideas.

I do not think that is really a hurdle that could not be ameliorated in some way.

Mr. SEIDMAN. Well, we would propose that the language be deleted from the bill because we see no need to state in the bill that people will appear in individual capacities. We did not say in our version of this bill either that they would be in individual capacities or not.

Mr. LIBONATI. You admit that the purposes are needed and could supply a much—let us say could supply a program to the agencies for some improvement, let us put it that way?

Mr. SEIDMAN. We feel an organization of this type can make a very significant contribution.

Mr. LIBONATI. Thank you very much.

Any questions, gentlemen—the gentleman from Wisconsin?

Mr. KASTENMEIER. Yes, just one or two questions.

Is H.R. 7200 today absolutely acceptable to the Bureau of the Budget? That is to say, if you had your choice today, are there any amendments you would make to H.R. 7200?

Mr. SEIDMAN. There are no substantive amendments. There were some other amendments to S. 1664 which I did not raise here, I do not think they are of major importance. And some may be improvements. We provided that all of the chairmen of the various major regulatory agencies would be members of the Conference, ex officio. I think that was amended in the Senate bill to permit the Chairman to designate someone else rather than requiring that the Chairman serve ex officio.

We certainly have no objection to that. It may well be an improvement. So, other than that, the ones of substance, as far as we are concerned, are the ones I mentioned in my prepared statement.

Mr. KASTENMEIER. Were S. 1664 and H.R. 7200 identical?

Mr. SEIDMAN. Yes.

Mr. KASTENMEIER. Precisely the same?

Mr. SEIDMAN. Yes.

Mr. KASTENMEIER. You heard earlier today comments on designation of numbers to comprise the Conference, not the Council. There is no number set forth in the bill. Representing the Bureau of the Budget, would you not like to see such more precisely identified in terms of numbers?

Would this not in fact—at least in part, as Mr. Libonati suggested—be a safeguard, if you had an acceptable number beyond which, say, the Conference would not go? Would not this be desirable?

Mr. SEIDMAN. I think it might well be, as I said earlier, if there were some number—and I am not really able to suggest exactly what it should be, a percentage perhaps, on number of outside people, to clarify this difficulty on "preponderantly."

As far as participation by Federal agencies, the difficulty is this: we would want any Federal agency which really had a significant interest in the work of the Conference to be able to participate. We do not want them all; some of them will have rather minor interests and that is why this language is written the way it is.

We have already had indication that almost any agency which even has a minor concern in matters coming before the Conference would want membership, so this would be difficult. We have new programs, laws change, and we would not want arbitrarily to exclude them.

I think the problem is really the number of members from outside the Government.

Mr. KASTENMEIER. As you would see it, then, the Director and Council would construe the Conference to be a very fluid thing, and would admit new members and perhaps ask for resignation of old members of certain agencies, depending on whether at a given time their agency or commission had special problems which would dictate their participation in this Conference; is that right?

Mr. SEIDMAN. That is correct, Mr. Kastenmeier. If you put a numerical limitation on the Conference as a whole and do not discriminate between the outside membership and the Federal agencies. Because then—for example, we had a new agency created recently, like the NASA; it is quite conceivable that their functions might be such that you would want to include them in the Conference.

On the one hand, you would not want to necessarily have to force out another agency in order to permit the NASA to become a member.

Mr. KASTENMEIER. But the Council you have provided for has 2- or 3-year terms?

Mr. SEIDMAN. That is right.

Mr. KASTENMEIER. Could you not have this for the Conference so that you would have a turnover?

Mr. SEIDMAN. I think we do have 2-year terms for the members of the Conference appointed from private life.

Mr. KASTENMEIER. Then you would have a turnover in any event, a situation which would allow you not to reappoint a member?

Mr. SEIDMAN. That is correct. The concept is that the Conference as an agency conference certainly ought to include representatives of those agencies with major concern with the subject matter under consideration, not just those with minor peripheral concern.

Mr. KASTENMEIER. One other question, that relating to cost. I would like to learn any expert advice on how much this would cost.

Being a member of the Budget Bureau I would think if there would be anybody expert on that, you would be.

Mr. SEIDMAN. The estimate you heard earlier is one that Mr. Staats, our Deputy Director, gave to the Senate committee; we have not precisely priced it out, but the estimated cost would be from about a quarter of a million dollars to half a million dollars.

Mr. LIBONATI. Well, we will leave the record open for 60, 80, 100, and 150, if you submit the schedule table on that.

With you, please?

Mr. SEIDMAN. We will endeavor to develop cost data, if you would like, Mr. Chairman. The estimates will depend on the number of members you wish. We could do it on varying numbers; we could do ranges of 60, 80, 90-plus.

Mr. LIBONATI. We discussed 60, 80, and I think 100.

Mr. KASTENMEIER. You mean in the Senate?

Mr. LIBONATI. In the Senate. On limitation of members; is that right?

Mr. SEIDMAN. I do not recall precisely. Judge Prettyman might remember.

Mr. LIBONATI. I think Congressman Harris made some comment. We will do that. You work that out, 60, 80, 100, 120, 150.

Mr. SEIDMAN. We will be glad to.

(Subsequently the Bureau of the Budget submitted the following:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., March 17, 1964.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee No. 3, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. WILLIS: I am sorry that an earlier commitment to testify before another congressional committee made it impossible for me to appear personally at your recent hearing on pending bills to create a permanent Administrative Conference of the United States. I was glad to learn from Mr. Harold Seidman, who testified for the Bureau of the Budget, that you and the other members of the committee are making a thorough exploration of the important issues involved in these proposals.

During Mr. Seidman's testimony the acting chairman, Congressman Libonati, asked the Bureau of the Budget to furnish estimates of the annual cost of a permanent Conference of 60, 80, or 100 members. A statement for the record is enclosed.

Considering the experience of the last Conference and the additional cost involved for the salary of a permanent Chairman, we estimate that expenditures would run around $250,000 per annum. The actual cost would depend, of course, on the number and scope of studies undertaken, and these would be shaped

largely by the views of the Chairman and the Council. Most of the expenditures would be for the Chairman, his staff, and other administrative expenses, such as printing. These costs would not be significantly affected by the number of Conference members. Since the Conference members would receive no compensation, the estimates for Conferences of different sizes would vary only with respect to travel and per diem costs for nonagency members living outside the Washington area. In the last Conference, which had 88 members, only 26 out of 38 nonagency members lived outside the Washington area. Assuming a similar proportion of nonresident members in a Conference in which nonagency members were about 40 percent of the total membership, we estimate that annual travel and per diem costs would range from approximately $8,500 for a Conference of 60 members to around $14,000 for a Conference of 100 members based on an average annual rate of $500 per member.

Mr. Fuchs also requested that the Bureau draft language which would carry out the suggestion of some committee members that limits be set on the total membership of the Conference and the number of nonagency members. Such a draft is enclosed. The draft also suggests language to assure that agency representatives would constitute a majority of the membership of the Council, which would be the executive committee of the Conference.

I would like to urge the inclusion of language along the lines suggested in the enclosed draft if your committee should decide to act favorably on either H.R. 7200 or S. 1664, as amended by the Senate.

The Bureau agrees with the Senate criticism that the language of H.R. 7200 and the original S. 1664 is "vague." However, the Senate amendments together with the language of the Senate report would leave the congressional intent uncertain and make it possible for an official Federal agency to be dominated by private parties. The Bureau of the Budget has grave doubts about the wisdom of enacting any legislation unless that possibility is removed and the congressional intent is made clear.

After careful consideration of the number of agency members needed to provide adequate agency representation the Bureau of the Budget believes that a Conference of 75 members, including no more than 25 members appointed by the Chairman, would best achieve the objectives of the Conference and leave some flexibility to meet changing circumstances. Since the Chairman and 4 Council members appointed by the President could be from outside the agencies, the total number of nonagency members would be no more than 30, or 40 percent, as suggested in the Senate report.

If the Bureau of the Budget can provide any further assistance to the committee in its consideration of these bills, I hope you will call upon us.

Sincerely,

ELMER B. STAATS, *Deputy Director.*

ESTIMATED ANNUAL COST OF A PERMANENT ADMINISTRATIVE CONFERENCE OF THE UNITED STATES COMPOSED OF 60, 80, OR 100 MEMBERS

Most of the expenditures for an Administrative Conference of the United States would be for the salaries of the Chairman and his staff and for other administrative expenses, such as printing. These costs would not be significantly affected by the number of Conference members. Therefore the cost of Conferences of different sizes would vary only with respect to the travel and per diem costs for members who live outside the Washington metropolitan area.

The following cost estimates are based on the experience of the last Conference and the provision for a full-time Chairman in the pending bills:

1. Estimated annual cost of the Conference	$250,000
2. Estimated travel and per diem costs for nonresident members:[1]	
(*a*) Conference of 60 members, including 17 nonresident members	8,500
(*b*) Conference of 80 members, including 22 nonresident members	11,000
(*c*) Conference of 100 members, including 28 nonresident members	14,000

[1] Assumes that 40 percent of the members would be from outside the agencies, of whom 70 percent would live outside the Washington metropolitan area. Estimated annual cost per nonresident member is $500.

[Draft, Mar. 12, 1964]

DRAFT LANGUAGE TO LIMIT THE SIZE OF THE ADMINISTRATIVE CONFERENCE AND THE NUMBER OF MEMBERS OF THE CONFERENCE AND THE COUNCIL WHO MAY BE APPOINTED FROM PRIVATE LIFE

The following amendments to S. 1664, as amended by the Senate, would limit the membership of the Administrative Conference to not more than 75 members. The Chairman and 10 other members of the Council would be appointed by the President, and not more than 25 members (or one-third of the total membership, whichever is the lesser) would be appointed by the Chairman with the approval of the Council. At least six of the Council members appointed by the President would be officials or personnel of Federal regulatory agencies or executive departments.

Section 4(a): Delete the period at the end of this section and add the following: ", which shall consist of not more than fifteen members appointed as set forth in subsection (b) of this section."

Section 4(b)(6): Delete all of item (6) and substitute the following: "(6) no more than twenty-five other members appointed by the Chairman, with the approval of the Council, for terms of two years: *Provided*, That the number of members appointed by the Chairman shall at no time exceed one-third of the total number of members. Such members shall be selected in a manner which will provide broad representation of the viewpoints of private citizens and utilize diverse experience, and shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure."

Section 6(b): Delete the first sentence of this section and substitute the following:

"(b) The Conference shall include a Council composed of the Chairman of the Conference, who shall be the Chairman of the Council, and ten other members appointed by the President, of whom at least six shall be officials or personnel of Federal regulatory agencies or executive departments. Members other than the Chairman shall be appointed for three-year terms, except that the Council members initially appointed shall serve for one, two, or three years, as designated by the President: *Provided*, That (1) the service of any member shall terminate whenever a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment, and (2) except as provided in item (1), above, any member whose term has expired may continue to serve until a successor is appointed."

Under the language, as drafted above, no more than 30 members or 40 percent of the total membership of 75 persons could be appointed from outside the participating agencies, including the Chairman and four other Council members appointed by the President. Within a range of 60 to 100 total members the size of the Conference may be changed without significantly altering its composition merely by substituting the desired total membership in section 4(a) and entering one-third of that total in section 4(b)(6) as the number to be appointed by the Chairman. For example, if the total membership is 60 and the Chairman appoints 20, no more than 25 members or 41.5 percent could be from outside the participating agencies. If the total membership is 100 and the Chairman appoints 33, not more than 38 members, 38 percent, could be from outside the agencies.

Mr. LIBONATI. On projected cost.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. LIBONATI. Any further questions?

We will leave the record open for any filing of any matters that you may feel are important after hearing the discussion back and forth of any of the witnesses or persons present, subject to the Chair's determination, when he closes the record.

But we will say for about 3 days anyway, the record will remain open at the behest of the chairman, Mr. Willis.

I declare the hearing adjourned.

(Whereupon, at 4 p.m. the hearing in the above-entitled matter was adjourned.)

○